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ABSTRACT

Volume II of the final report of the Native Hawaiians Study Commission (NHSC) on the culture, needs, and concerns of native Hawaiians, this book contains a formal dissent to the conclusions and recommendations presented in Volume I made by three of the NHSC commissioners. Its principal criticism is that Volume I fails to address the underlying intent of the commissioned study: (1) to assess the American involvement in the take-over of the Kingdom of Hawaii; (2) based on the finding regarding American participation in the coup d'etat of 1893, to ascertain whether American culpability for injuries or damages suffered by Native Hawaiians existed; and (3) to advise about how to approach and answer any such Native Hawaiian claims. This volume of the report further states that critical support is lacking for Volume I's argument that the United States bears no legal or moral responsibility for the actions of American officals during the coup d'etat of 1893. After an executive summary, flaws of methodology, interpretation, and conclusion in the following areas covered by Volume I are discussed: (1) the historical review of American participation in the overthrow of the Kingdom of Hawaii in 1893; (2) the conditions and terms of American annexation of the Hawaiian Islands; (3) the trust responsibilities of the Hawaiian Homes Act; and (4) the cultural and social needs of native Hawaiians. Recommendations are presented regarding rhe resolution of compensable claims by Native Hawaiians for losses of domain and dominion. (KH)

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Volume II

NATIVE HAWAIIANS STUDY COMMISSION

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Report on the culture, needs and concerns of Native Hawaiians

UD 024 136

June 23, 1983

ERRATA

We regret that errors appear in the text of Volume II. Prepared in Honolulu and printed in Washington, D.C., there was no opportunity to correct these errors prior to publication.

Obvious typographical errors are not listed. Only errors of fact are corrected here.

Please note that U. S. Minister John L. Stevens and Captain G. C. Wiltse are the correct forms of the individuals named.

Page 4 line 26	REPLACE CEDED LANDS with The Events of 1893
Page 8 after 1st para.	INSERT RECOMMENDATION Based on these findings, we recommend that: o the Congress of the United States by, Joint Resolution, clearly acknowledge the role and actions of the United States in the overthrow of the Kingdom of Hawai'i and indicate its commitment to grant restitution for the losses and damages suffered by Native Hawaiians as a result of these actions.
Page 20 lines 21 & 22	SHOULD READ "The terms of the treaty created an unfavorable balance of trade for the United States."
Page 38 line 23	SHOULD READ Secretary of State Seward's message was transmitted in 1866, not 1886.
Page 43 line 39	SHOULD READ pro-annexationist leanings not pro-annexationist leansings
Page 68 line 5	SHOULD READ no note, not no vote was ever made as to the actual composition of the Kingdom's population

FINAL REPORT

Native Hawaiians Study Commission

VOLUME II

CLAIMS OF CONSCIENCE:

A Dissenting Study of
The Culture, Needs and Concerns of Native Hawaiians

Cover photos:

UPPER LEFT: The statue of King Kamehameha the Great; photo by Robert Goodman.
UPPER RIGHT: A Hawaiian elder or kupuna; photo by Robert Goodman.
LOWER RIGHT: Iolani Palace; photo by Robert Goodman.
LOWER LEFT: A Hawaiian girl; photo by Robert Goodman.

The Commission is grateful to Toni Auld Yardley for supplying the cover photos and the photos that appear in Volume I of this Report.

RESPECTFULLY SUBMITTED TO ______________________________

The Committee on Energy and Natural Resources
of the
United States Senate

The Committee on Interior and Insular Affairs
of the
United States House of Representatives

Pursuant to Section 203, of Public Law 96-565, "Title III" establishing the Native Hawaiians Study Commission

23 June 1983

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FOREWORD

The Final Report of the Native Hawaiians Study Commission (NHSC) culminates a 21-month study of the culture, needs and concerns of Native Hawaiians. As mandated by Public Law 96-565, "Title III," this report of findings and recommendations is respectfully submitted to the United States Senate Committee on Energy and Natural Resources and to the United States House Committee on Interior and Insular Affairs.

This Volume II of that Final Report, entitled Claims of Conscience: A Study of the Culture, Needs and Concerns of Native Hawaiians, is a formal dissent to the conclusions and recommendations presented in Volume I.

We believe that Volume I is inaccurate and fatally-flawed both in fact and in spirit. Thus, we are compelled to present this minority position for your full review and consideration.

The inherent difficulties posed to your Committees and, ultimately, the entire Congress as a result of these sharp disagreements in the Final Report cannot be avoided. It is our sincere hope, however, that by providing a more thorough analysis, Congressional review will be more complete than a review based solely on the analysis presented in Volume I.

The greatest obstacle facing this Final Report by the Commission is not truly its disagreement, but the possibility of not being taken seriously. The popular perception of Hawai'i as a vacation playground whose residents are to be envied for their year-round sun and surf has been a burden to the work of this Commission. At one point, the very life of the Commission was called into question when an Administration official labeled the study "a boondoggle."

Funding handicaps and a reluctance by Mainland Commissioners to conduct meetings in the Islands may also, at least in part, be explained by this assumed lack of serious intent, because it relates to Hawai'i.

As traced through its predecessor measures, the Congressional focus and intent in creating the Native Hawaiians Study Commission was very serious indeed: to assess the American involvement in the take-over of the Kingdom of Hawai'i. Then, based on the historical findings regarding the nature and degree of the United States' participation in the coup d'etat of 1893, the task was to ascertain whether American culpability for injuries or damages suffered by Native Hawaiians existed as a consequence of these actions. Further, the Congress then wished to be advised about how to approach and to answer any such possible Native Hawaiian claims. Volume I has failed to address in sufficient depth this underlining intent and accordingly, cannot provide Congress with the proper advice regarding Native Hawaiian needs and claims.

Lacking the needed critical and probing analysis, the findings and conclusions contained in Volume I argue that the United States bears no legal or moral responsibility or culpability for the actions of American officials at that time.

WE DISAGREE.

Further, Volume I asserts that, regardless of this rejection of legal or ethical accountability by the United States, that Native Hawaiians were not deprived of any compensable interest represented by the Kingdom of Hawai'i. Thus, even if the United States were to admit any responsibility for the overthrow of the Kingdom of Hawai'i -- a position which they deny -- then there would still be no basis for claims by Native Hawaiians.

AGAIN, WE DISAGREE.

Moreover, the majority of the Commission's membership is of the opinion that departures from standards of proper international behavior or of traditional assent to transfers of lands and sovereignty -- as understood and practiced in American precedents -- also do not bear any violation or abridgement of Native Hawaiian interests or rights.

WE DISAGREE.

The contents of this volume: (1) will describe and refute in detail the discrepancies and inconsistencies which mark and mar the reasoning behind the majority conclusions; (2) review the contemporary needs and concerns of Native Hawaiians within a context of national responsibilities affected and altered by the circumstances attending the end of the Kingdom of Hawai'i; (3) examine subsequent actions taken at the annexation of Hawai'i, and American policy determinations as they evolved during the territorial period, and as they were modified at and after statehood of the Islands.

It is our belief that a misdeed occurred when the Hawaiian monarchy was overthrown in 1893. An open and searching examination of the past and its possible misdeeds should never be taken as a personal affront. Rather, one of the great strengths of the United States has been the ability to rededicate itself to principles sometimes compromised in the past.

This vitality is the creativity of the American conscience. The impulse is to correct wrongs, not to be angered by misplaced guilt.

It is critical to the mission of this study that an active acknowledgement and incorporation of both American and Native Hawaiian cultural values, traditions and laws be explicitly drawn on. At times, these twin sources of modern Hawaiian thought are at variance or even contradictory.

Particularly in an historical context, this competition can result in fundamentally divergent interpretations and analysis. Where possible, these cultural differences can be examined and used as a process encouraging insight and improved mutual understanding.

For when these differences are ignored, overlooked, or subjected to the dominance of one culture or the other, then only confusion results. It is our opinion that Volume I has not adequately taken note of the cultural dynamics impacting on Native Hawaiian needs and claims.

In this Volume II, then, we will encourage and foster -- both in style and substance -- an integrated report which expresses the needs and concerns of Native

Hawaiians today as:

1) a consequence of cultures in conflict and of historical actions where mutual harms were suffered, some of which can never be repaired; and

2) a continuing consequence of the past which is appropriate to Congressional review, and capable of being repaired by national action.

Native Hawaiians are Americans now, proud of the ideals and qualities of justice through law. The pride in being Native Hawaiian is also strong. The overwhelming majority of Native Hawaiians do not want history to be re-written or to separate themselves from the United States. As proud Americans and Native Hawaiians, though, there is a desire and a basis for a remedy to past losses and damages.

Kina'u Boyd Kamali'i
Chairperson

Winona K. Beamer
Commissioner

H. Rodger Betts
Commissioner

Honolulu, Hawai'i
June 1983

INTRODUCTION

Volume II, *Claims of Conscience: A Dissenting Study of the Culture, Needs and Concerns of Native Hawaiians*, fulfills the stated objective of P.L. 96-565:

> "...SEC. 303. (a) The Commission shall *conduct a study of the culture, needs and concerns of Native Hawaiians*.
>
> (b) The Commission shall conduct such hearings as it considers appropriate and shall provide notice of such hearings to the public...
>
> (c) Within one year after the date of its first meeting, the Commission shall *publish a draft report of the findings of the study* and shall distribute copies of the draft report to appropriate Federal and State agencies, to Native Hawaiian organizations, and upon request, to members of the public. The Commission shall solicit written comments from the organizations and individuals to whom copies of the draft report are distributed.
>
> (d) *After taking into consideration comments submitted to the Commission, the Commission shall issue a final report of* the results of its study within nine months after the publication of its draft report. The Commission shall submit copies of the final report and copies of all written comments on the draft submitted to the Commission under paragraph (c) to the President and to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.
>
> (e) *The Commission shall make recommendations to the Congress based on its findings and conclusions* under subsection (a) of this section..."] (emphasis added)

This presentation of findings and recommendations for Congressional review does, indeed, consider, incorporate and reflect necessary changes to the circulated draft report on the basis of fundamental questions raised against the draft.

In particular, concerns were expressed and taken with:

1) the historical methodology and objectivity of analysis used for the draft report and basically unchanged in Volume I;

2) the dearth of primary sources and heavy reliance on a single secondary source -- Ralph Kuykendall's three-volume The Hawaiian Kingdom (published between 1938 and 1967, with the final volume published after Dr. Kuykendall's death and compiled from his notes);

3) the selective and often misleading presentation of the background of events and forces leading to the overthrow of the Kingdom of Hawai'i. In particular:

    a) a lack of consideration for the international aspects of Euro-American rivalries and actions in the Kingdom;

    b) a lack of recognition for the changing nature of American and United States involvement and interest in the Kingdom;

    c) a lack of closely-examined shifts in the tone and direction of United States diplomatic and naval communication to Kingdom agents;

    d) a lack of careful review of the specifics of American participation in the overthrow, especially the roles of U.S. Minister John L. Stevens and Naval Commander G. C. Wiltse;

    e) a lack of international law application to the actions of American agents in the overthrow.

4) a fundamentally flawed legal analysis of the consequences of the overthrow of the Kingdom of Hawai'i and the damages suffered by Native Hawaiians as a result of:

    a) a misinterpretation of Native Hawaiian traditional land tenure practices, and their reflection in the laws and actions of the Kingdom of Hawai'i;

    b) an inappropriate and frequently forced application of American Indian law precedents as the test of Native Hawaiian land interests and rights; and

    c) the use of such tests to discredit Native Hawaiian claims, rather than to indicate the ethical parallels presented in Congressional attention to similar Indian and Alaskan native claims recognition, by various acts of Congress.

It is the intent and purpose of this dissenting Volume II, therefore, to make every possible effort to respond to these concerns, and to offer a thoughtful alternative to the findings, conclusions and recommendations derived from flawed methodology, limited research, and too-restrictive applications of inappropriate legal analysis.

Further, it is the intent of this Volume II to examine the current needs of Native Hawaiians in a context of:

1) a consequence of past events, actions, and conditions;

2) particular conditions which are traceable, in large degree, to the difficulties of adjustment by an indigenous people to the process of conquest and assimilation whose redress require concerted governmental action; and

3) the continuing impact of public lands policies, uses, and diversions to the detriment of Native Hawaiian interests and rights.

To better highlight and draw attention to these differences of approach, methodology, and analysis and the concomitant divergence of resulting findings, conclusions and recommendations -- Volume II includes a Critical Analysis of these disagreements between Volumes I and II.

This Critical Analysis follows this section.

EXECUTIVE SUMMARY OF VOLUME II

Volume II of the Final Report of the Native Hawaiians Study Commission is a formal dissent to portions of the findings, conclusions and recommendations contained in Volume I of this report.

Included as a part of this Executive Summary are the dissenting findings, conclusions and recommendations relating to the culture, needs and concerns of Native Hawaiians. The areas addressed by this Volume II are of mutual significance and long-range importance to both the Congress of the United States and to the Native Hawaiian people.

Critical Analysis of Volume I

Following this summary is a critical analysis of Volume I. Fundamental flaws of methodology, interpretation, and conclusion are identified in the following area; 1) the historical review of American participation in the overthrow of the Kingdom of Hawai'i in 1893; 2) the conditions and terms of American annexation of the Hawaiian Islands; 3) the trust responsibilities of the Hawaiian Homes Act; and 4) the cultural and social needs of Native Hawaiians.

Major faults of Volume I may be traced to contextual and attitudinal errors. Too heavy a reliance on the implied similarities between Native Hawaiians and other Native American groups, resulted in a forced historical, legal, and cultural study of Native Hawaiians.

Thus, Volume I came to fatally-flawed conclusions and recommendations. The purpose of Volume II is to correct those errors.

PART I THE OVERTHROW OF THE KINGDOM OF HAWAI'I

As traced in the legislative history of the Native Hawaiians Study Commission, the Congress wished to be advised about:

1) whether a wrong had been committed against the Native Hawaiian Nation and its people by actions of the United States in the overthrow of the Kingdom of Hawai'i in 1893;

2) whether this wrong was the basis for compensable claims against the United States by Native Hawaiians; and

3) what appropriate remedy could be recommended to redress that wrong and to settle such claims.

Structured in three chapters, this section of Volume II:

1) reviews and assesses the historical diplomatic and political relationships between the United States and the Kingdom of Hawai'i in an international context. Chapter I, titled "A Changing World," offers an overview of European and American responses to the Kingdom, both as a feature of the broader tensions existing among Western countries and as a direct force in the policies of the United States and the Kingdom;

2) examines in detail the sequence of events, decisions and actions which culminated in the overthrow of the Kingdom. Titled "Three Days in January, 1893," Chapter II draws heavily on the written recollections of key participants during this intense period, and also on the official correspondence of the United States State and Navy Departments; and

3) reinterprets the significance of the two formal reports which resulted from

investigations into the American role in the overthrow of the Kingdom. Chapter III, "The Blount and Morgan Reports Re-examined," rejects the contention that the investigations conducted at the direction of President Grover Cleveland and of the United States Senate Foreign Relations Committee differed in their substantive analysis of American participation.

The following findings are offered on the basis of the information discussed in Chapter 1:

- o The final phase of European exploration included the re-discovery of the Hawaiian Islands in 1778. The strategic and commercial importance of Hawai'i was recognized by Captain Cook, but did not feature prominently in England's interest in the Pacific until the mid-19th century.
- o The tensions between the United States and England, consequences of the American Revolution, and the War of 1812, influenced American commercial and whaling interests in the direction of the Pacific. American missionary presence in the Islands, beginning in 1820, also asserted and fostered national attention.
- o Diplomatic and commercial ties between the two nations reflected and were strengthened by American continental expansion to the West Coast, attempts by both France and England to challenge the sovereignty of the Kingdom, and the need to defend the new United States territories.
- o After 1850, American foreign policy increasingly and more forcefully asserted American dominance of interest in the Kingdom. The Civil War interrupted, but did not halt this trend. Eventual American annexation of the Islands was assumed, and a formal policy of encouraging that formal transfer of sovereignty and control was enunciated by the United States Department of State.

- American military interest in establishing a coaling station at Pearl Harbor intensified United States policies towards Hawai'i. Commercial treaties of reciprocity affecting Hawaiian sugar interests incorporated this strategic consideration.

- During the second half of the 19th century, European and American policies were deeply affected by renewed commitments to nationalism and imperialism. Throughout the Pacific, international assertions of political control over native governments occurred. Experiencing these same impulses, and fearful of their interests in Hawai'i, the United States did not conceal its support for less than peaceful efforts to consummate annexation.

CONCLUSION

By 1892, the United States had formulated a formal policy objective of annexing Hawai'i. Precisely how this acquisition was to be finalized was unclear.

However, the aims of key Department of State and Navy officials and their instructions to agents in the Kingdom of Hawai'i implicitly endorsed all means to this end.

CEDED LANDS

From a close examination of the events, sequence of actions, and first-hand accounts of principal participants in the overthrow of the Kingdom, Chapter 2 reviews in detail the days of January 15, 16, 17, 1893. Although historical patterns of American diplomacy and foreign relations, and Kingdom political unrest were clearly factors in the shape of those days, an intensive focus is critical to the findings of this Volume II.

Based on that review in Chapter 4, we offer these findings:

- that the announced intention of Queen Lili'uokalani to promulgate a new Constitution for the Kingdom of Hawai'i was not the decisive factor in the events which followed. Rather, her proposed action was only the pretext for setting in motion a long-planned insurrection against the government for the purpose of achieving American annexation of the Islands;

- these plans, known to the United States for nearly a year by high-ranking officials of the American government in the Congress and Departments of State and Navy, were formulated by a small group of Kingdom residents. Without the active support and intervention of United States officers in Hawai'i, however, these plans would not have succeeded;

- U.S. Minister John L. Stevens was kept apprised of all planned actions by both the royalist and insurgent factions. The nature of his responses led the Committee of Public Safety members to assume his support, and Kingdom cabinet officials to believe that he would not aid the government. These verbal communications directly influenced decisions and actions from both groups;

- these impressions were given greater weight when Minister Stevens responded to a Committee request for American protection of their lives and property. He modified these instructions to Commander Wiltse of the U.S.S. Boston as a needed landing of American marines and sailors to protect American lives and property. However the placement of these troops at Arion Hall indicated military support for the plans of the overthrow;

- a proclamation endorsed by the Committee of Public Safety was read from the steps of the Government Building (across the street from Arion Hall), establishing a provisional government for Hawai'i pending finalization of American annexation. Stevens indicated his recognition of this provisional government to representatives of the Queen before notifying the Committee;

- o believing that resistance would only result in armed opposition by the United States, Queen Lili'uokalani yielded to the superior forces of the Untied States.

CONCLUSION

Based on these findings, we offer this conclusion:

The diplomatic and military actions taken by U. S. Minister John L. Stevens and Naval Commander G. W. Wiltse were decisive in assuring the success of the Committee for Public Safety's establishment of a provisional government in Hawai'i. Their actions as officers of the United States government caused the Queen to yield the authority of her government to the United States.

After the Queen yielded and the Provisional Government was recognized by the United States, steps were immediately taken to assure the annexation of Hawai'i. A change in national administrations would occur on March 4, and there was an urgency to completing negotiations during the Harrison presidency.

To permit provisional government officials to travel to Washington before their power was consolidated, Minister Stevens responded favorably to their request for an American protectorate over Hawai'i. This action was clearly beyond the scope of State Department instructions to the Minister.

The acceptability of his prior actions, however, was the subject of two investigations during the next year.

Chapter 3 The Blount and Morgan Reports Re-examined, discusses the nature of agreements and disagreements between the two reports and their conclusions.

Based on a careful reading of the two reports, and a review of international law provisions applicable to the differences of conclusion between the reports, the following findings are offered:

- Congressman James Blount, former Chairman of the House Committee on Foreign Relations, was appointed by the newly-inaugurated Grover Cleveland to conduct an investigation of the circumstances and actions of American officers in the overthrow of the Kingdom of Hawai'i. His report concluded that Minister Stevens and Commander Wiltse had abused their authority and been directly responsible for the change in Island governments.

- Based on his report, Secretary of State Walter Q. Gresham advised the President that the United States had been involved in illegal acts against the Kingdom, and that some remedy should be sought to restore the Queen to her throne.

  Minister Stevens was recalled from his diplomatic post and Commander Wiltse was disciplined and resigned his commission.

- The Blount Report was the basis for an "Executive Message to Congress" detailing American actions in Hawai'i as contrary to United States moral standards and detailing the improper use of American authority, and asking the Congress to devise a repair of the damages suffered as a consequence;

- U.S. Senator John Morgan initiated an investigation based his disagreements with Cleveland's Executive Message. His specific repudiations of the Blount Report findings, however, were not over the actions taken, but whether such acts were a violation of the extraordinary powers enjoyed by American officers in Hawai'i. Where Blount found fault, Morgan offered praise.

- Under the principles of international law, the actions of Minister Stevens and Commander Wiltse were clear violations of the sovereignty of the Kingdom of Hawai'i. As agents of the United States government, the United States shares in their culpability and is liable for damages which resulted.

There are a number of possible legal basis for a Native Hawai'i claim of reparations or restitution for the losses of domain and dominion suffered at the time of the overthrow and subsequently with annexation:

1) the history of Congressional willingness to address and compensate Native American claims which are not strictly legal, but moral in character;

2) implied fiduciary trust responsibilities of the United States for Native Hawaiians based, in part, on federal legislation establishing the Hawaiian Homes Act, the inclusion of Native Hawaiians as a possible beneficiary class in the Statehood Act of 1959 for Hawai'i; and

3) the collective rights of Native Hawaiians in the Crown and Government lands which parallel the criteria for past compensations to Native Americans based on aboriginal title claims.

After a careful historical and legal analysis of these possible legal basises, the following findings are offered based on the information in Chapter 4:

- Claims by Native Hawaiians are unique. Existing laws relative to native claims by American Indians and Alaskan Natives and Indians are derived from traditions and experiences fundamentally different from those of Native Hawaiians. Thus, the application of precedent and criteria established for non-Native Hawaiian only provide broad statements of principle and policy, not true legal tests of validity or standing.

- Congressional willingness to consider the merits of native claims on moral rather than strictly legal grounds is well-documented. Native Hawaiians do not fulfill the existing legal criteria for claims based on Native American precedents regarding aboriginal title or recognized title. However, the mandate of this Commission to review Native Hawaiian claims would not have been necessary if such laws already existed.

- Native Hawaiians held common and undivided ancestral land rights and interests vested in the domain and dominion of the Kingdom;

- these ancestral land rights and interests were not diminished nor extinguished by any royal or government actions initiated by the Kingdom of Hawai'i, but were protected and guaranteed by legal titles held by the Kingdom for all public, government, and crown lands;

- without the consent of or compensation to Native Hawaiians, these land rights and interests were assumed and subsequently ceded to the United States by a government whose existence was dependent on illegal actions by the United States;

- these land rights and interests were accepted by the United States without the consent of or compensation to Native Hawaiians, and without any disclaimer provision to protect these land rights.

Based on these findings, we advise the Congress that Native Hawaiians have a moral basis for compensable claims in the loss of ancestral land rights and interests vested in the domain and dominion of the Kingdom of Hawai'i.

These compensable claims echo, but do not duplicate, similar claims by American Indians and Alaskan

Natives. The strongest parallel among the claims is a call for American justice once a wrong has been acknowledged.

RECOMMENDATIONS

Therefore, we recommend to the Congress that:

- the U.S. Senate Committee on Energy and Natural Resources and the U.S. House Committee on Insular and Interior Affairs consider and determine a just and equitable resolution of compensable claims by Native Hawaiians for losses of domain and dominion;
- these Committees consult and involve Native Hawaiians to the greatest extent possible in the resolution of these claims, and that any proposed restitution be subject to formal acceptance by Native Hawaiians; and
- pending resolution of these claims that the Congress take the appropriate action to assure that all lands controlled by the federal government in the State of Hawai'i maintain current use and status, and that the archipelagic waters of Hawai'i enjoy the same security.

Congressional consideration of restitution to Native Hawaiians for illegal American actions leading to the overthrow of the Kingdom will, in all likelihood, include an examination of existing trust relationships between the United States and Native Hawaiians. These trust relationships are distinct, albeit not separate, from the claims for compensable losses and damages.

In order to help clarify the nature of the claims, however, a review of the trust relationships is a part of the groundwork necessary for determining restitution.

PART II The Native Hawaiian Trusts

The Ceded Lands Trust. The public, crown, and government lands of the Kingdom totalled approximately

1.9 million acres -- nearly half the domain of the Islands. Under the control of the Republic of Hawai'i, 200,000 acres of these once-inalienable lands were transferred to private ownership.

At the same time of American annexation of Hawai'i, then, the ancestral lands of Native Hawaiians encompassed 1.7 million acres of Hawai'i, much of it planted in sugar and pineapple by the terms of royal leases. These leases were undisturbed by the Republic and remained in force under the United States.

In the Joint Resolution of Annexation adopted by the Congress and passed by the Legislature of the Republic, the sovereignty and all "public, crown or government lands" were ceded to the United States. This cession -- appropriate under international law -- was conducted without the consent of the people of Hawai'i and without compensation to Native Hawaiians.

The terms of this transfer, their later discussion in numerous Congressional hearings on statehood for the Territory of Hawai'i, and the eventual ratification of the Admission Act, substantiate these findings:

- the public, crown, and government lands ceded to the United States were transferred as a trust to be maintained and managed for the benefit of all the "inhabitants" of Hawai'i;

- this trust imposed fiduciary responsibilities on the United States and constrained the use, management, and proceeds generated from the trust to public purposes;

- the bulk of these lands were returned in fee to the State of Hawai'i in the Admission Act, with explicit trust impositions and the naming of two possible beneficiary classes: Native Hawaiians, as defined in the Hawaiian Homes Act, and the general public;

- the broad public purposes enunciated as consistent with the trust could be fulfilled at the discretion of the State; however, any purpose outside those named would result in a breach of trust.

CONCLUSION

From these findings, it is quite clear that the ceded lands trust was never intended nor construed to be restitution to Native Hawaiians.

The provision for Native Hawaiians, however, persuasively argues that Congress has extended a preliminary recognition of Native Hawaiians interest in those lands.

These additional findings are offered to clarify the nature of that intent.

- The State of Hawai'i, in the State Constitution of 1978, acknowledged the beneficiary interest of Native Hawaiians and provided a pro rata share of the ceded lands revenues be set aside for the "betterment of Native Hawaiians." These funds are administered and managed by the Office of Hawaiian Affairs whose Board of Trustees are elected by all Hawaiians.

  (It should be noted here, and will be discussed in detail later, that the Native Hawaiians definition of the Hawaiian Homes Act is different from that guiding this Commission.)

- This trust as a federal responsibility was not extinguished by the Admission Act or its terms. All ceded lands set aside for national park purposes was declared fee and the property of the Department of the Interior. However, it was the intent of Congress that all other lands controlled by the federal government were subject to return and incorporation into the trust of the State of Hawai'i.

- This reversionary interest of the State in all non-park federal lands is now also of explicit trust interest to Native Hawaiians by the establishment of the Office of Hawaiian Affairs.

In the twenty-four years since Statehood, however, less than 600 acres of federally-controlled ceded lands have been returned from a total of nearly 40,000 acres.

RECOMMENDATION

Based on these findings, and the now-explicit reversionary interests of the Native Hawaiians and the State of Hawai'i, the following recommendation is offered to the Congress:

- o that the Congress establish a Joint Federal-State Ceded Lands Commission for the State of Hawai'i, to review the present status use and possible release of federally-controlled ceded lands in Hawai'i

- o that this Commission advise the Congress on the status of these lands, and have the authority to declare such lands surplus and available for return to the State of Hawai'i; and

- o that Native Hawaiians be included and consulted in the course of the Commission's review.

The Hawaiian Homes Trusts

The Hawaiian Homes Act was passed by Congress in 1921, while Hawai'i was still an American territory. In 1959, the lands and the charge to rehabilitate Native Hawaiians by land awards for homesteading, ranching and farming was transferred to the new State of Hawai'i.

Although significant charges in the legal quality of the trust occurred with this transfer, the persistent problems of the program remained. Much of what colors the failings of the Hawaiian Homes were there at its inception and have continued unchanged:

1) the linkage of the Act's passage with amendments to the Organic Act of the then-Territory of Hawai'i removing a general homesteading provision from basic document of the Islands governance. A tandem arrangement which permitted the sugar plantations to

maintain their public lands leases in excess of the original 1,000-acre limitation, and consigned to Hawaiian Homes Lands to those which were "available," meaning not already or desirable for cane production;

2) a vague purpose of "rehabilitation" which, from hearings on the concept, seems to have merged the traditional American belief of the yeoman virtues with the traditional pre-contact Native Hawaiian uses of the lands; and

3) a trust whose fiduciary integrity appears to have been abridged most by those charged to guard its resources and beneficiaries.

Chapter 6

The Hawaiian Homes Trust addresses the concerns surrounding the proper use and conservation of the trust's assets. From a review of the Act's provisions, trust-related questions, and impact on the program's accomplishments, we offer the following findings:

- Congress enacted the Hawaiian Homes program, setting aside more than 200,000 acres of the lands ceded to the United States at annexation for the purpose or rehabilitating Native Hawaiians by a restoration of qualified beneficiaries to the lands;

- Title to the lands were retained by the federal government, and $1-a year, 99-year leases of the lands were provided as awards. Provisions within the Act prohibited the encumbrance or sale of the lands, and a 7-year property tax exemption was provided from 1920 until 1959, the trust responsibilities were the fiduciary obligations of the United States;

- Since 1936 the Governors of the Territory and State of Hawai'i have issued 28 executive orders affecting the use and control of over 30,000 acres of land. These lands were transferred to other uses and no compensation was ever made to the trust for these uses, nor were any lands of equal value ever exchanged for these withdrawals as required by the Hawaiian Homes Commission Ac.t

- Precedents set by the United States for withdrawals under Executive Orders were continued after statehood. Since 1959, the State of Hawai'i has, by five Executive Orders (no. 2262, no. 2333, no. 2493, no, 2494, no. 2009), withdrawn 2.3 acres of Hawaiian Home Lands for public uses. No compensation was ever paid for the use of these lands, nor were land exchanges consummated to replenish the Department of Hawaiian Home Lands inventory for lands withdrawn.

- At present, certain land management policies followed by the Department are not based on the provisions of the Act. The DHHL has been following a practice of generating revenues for its own administrative costs by leasing homestead lands to non-beneficiaries. Consequently, 80% of the lands have been leased to non-beneficiaries.

Chapter 7 addresses the implementation and performance of the program, with an identification of the particular provisions of the Act which remain most nettlesome to the success of the program. Based on those considerations, the following findings are offered:

- Of a potential beneficiary class of 40,000 individuals estimated to be eligible for the program in 1920, less than 3500 awards have been granted in the sixty years of the Act's existence. Early, stringent provisions on total acreage awards, the harshness of the lands provided for the program, the availability of water, and most importantly a lack of funding have hampered the program;

- the only revenues provided the program by the terms of the Act were 30% of the revenues generated from the sugar land leases and water licenses, sums grossly inadequate for the goals of the program. This problem was aggravated by the need for the Hawaiian Homes to generate income for an initial four loan funds and to pay its own administrative costs. To gain this revenue, the program has and continues to lease the bulk of its lands to non-beneficiaries as a means of generating needed income;

- for the beneficiaries who have been granted an award, the prohibition against using the equity of the homestead has deprived the awardee of enjoying the customary rights of even ground leasehold interests. This prohibition then affects the homesteader's ability to use the financial leverage of his award for needed improvements, replacement construction, or the typical family uses of home mortgaging possibilities.

A Joint Federal-State Task Force on Hawaiian Homes is now in the process of reviewing many of these problems. It is not within their scope of responsibility to report directly to the Congress.

Thus, we are recommending that:

1. The Congress of the United States, by joint resolution, indicate their commitment to review the implementation of the Federal-State Task Force on the Hawaiian Homes Commission Act within two years of the termination of the Task Force;

2. That if this review finds that compliance by the State of Hawai'i or the Department of the Interior has not occurred satisfactorily or constitutes a Breach of Trust, that appropriate action be taken; and

3. That the Congress of the United States enact the necessary Legislation granting jurisdiction to the beneficiaries of the Hawaiian Homes Trust to seek judicial review and resolution of abridgements of the trust.

PART III The Native Hawaiian People

Severe health, economic, and educational problems affect Native Hawaiians. As with the other indigenous people of the United States, these conditions are reflective of mutual disadvantages between a native and on-native society.

Two definitions of Native Hawaiian and an unequal application of Native American status have caused additional cultural, social and economic hardship to the Hawaiian people.

Therefore we recommend:

- the inclusion of Native Hawaiians in all native American programs, without prejudice;
- a concerted study by federal and state professionals to adequately assess the needs of Native Hawaiians, and to provide additional assistance from existing programs;
- the consideration of special Native Hawaiian programs at the federal level to redress these disadvantages; and
- that the Congress of the United States adopt a single definition of Native Hawaiian to mean any individual whose ancestors were natives of the area which constituted the Hawaiian Islands prior to 1778. Proper guarantees to protect the rights and privileges of those now holding or awaiting a Hawaiian Homes award should accompany this change.

CRITICAL ANALYSIS OF VOLUME I

The dissenting position offered by Volume II of the Final Report of the Native Hawaiians Study Commission requires that we begin with a clear statement of the nature and extent of disagreement between Volume I and Volume II. This critical analysis will explicitly examine the historical accuracy or interpretations contained in Volume I, and confronted in this Volume.

To facilitate this critical analysis, specific findings and conclusions will be cited from Volume I. A final, paginated version of Volume I is not available as we write this report. Therefore, reference to the cited quotations from Volume I will be described in general but useful terms. Further, explicit note will be made of any such citations which may appear out of sequence or not in their entirety.

Although not a significant factor in the process of analyzing specific areas of contention, the findings and conclusions of Volume I are presented here as parallel to the structure of Volume II.

The Overthrow of the Kingdom of Hawai'i

The following conclusions are extracted from Volume I, Conclusions and Recommendations, Part II, Federal, State and Local Relationships.

> "...o Hawaii has a long and rich history. As a separate sovereign nation, it developed relations with the United States through treaties and other dealings prior to 1893. For example, treaties were developed between the two countries to facilitate trade and to serve the interests of those in Hawaii seeking economic development to improve the country's financial situation. The treaties also promoted the economic, security, and defense interests of the United States..."

One of the major failings of Volume I is its neglect of an international diplomatic setting, whether in direct relationship to the Kingdom or (often more importantly) to the motivations and policies of the United States. As presented, there is an erroneous assumption that the bi-lateral diplomacy between the nations was the over-riding determinant of subsequent actions.

As examined in Chapter 1, "A Changing World," of Volume II, American interests in the Kingdom were directly affected and often governed by considerations reflecting Western rivalry. In particular, relations between the United States and England were crucial to American perceptions of Kingdom developments, personalities and proposed actions.

Further, the Reciprocal Trade Treaties which were concluded between the United States and the Kingdom were -- contrary to the findings of Volume I -- also an explicit political, not economic, interest designed to keep the Kingdom in an American sphere of influence. Commercially, the treaty created an unfavorable balance for the United States. terms of the treaty.]

The security and defense interests of the United States are also a misrepresentation of policies at that time.

How this debate affected Hawai'i is also included in Chapter 1.

This conclusion ends with:

> "...o In addition to these foreign policy considerations, tensions between the monarch and the legislature also affected Hawaiian politics during these years, as did efforts by the native Hawaiians to regain power from reformers. The culmination of these trends occurred in 1891 when Liliuokalani became queen and attempted to reassert the power of the throne against the legislature and the reformers..."

A large section of Volume I is dedicated to a detailed description of domestic Kingdom politics. Unfortunately, a bias which can only be called racist is revealed by calling the members of the Reform Party and their supporters "reformers."

To the modern American mind, a political reformer denotes one who enlarges or expands democratic participation within the system of government. The thrust and the result of Reform Party initiatives was to narrow the franchise, to vest legislative power in an oligarchy, and to consolidate their economic exploitation of Hawai'i. In short, the "reformers" were insurgents. That they believed these purposes would be best served by American annexation does not assume that they were seeking the full expression of democratic principles and protections associated with the United States. Rather, they made every attempt to retain their privileges and prerogatives within the Territory.

The next conclusion offered in Volume I is:

> "...o In 1893 the monarchy was overthrown. The overthrow, and the lack of resistance by the queen and her cabinet, was encouraged in part by the presence of United States forces, consisting of one company of Marines and two companies of sailors (approximately 100 men), acting without authority from the United States government..."

How could one company of Marines and two companies of sailors have landed and taken up positions in the city of Honolulu "without authority from the United States government"?

The United States Minister, acting on instructions and vested with the authority of his diplomatic office, requested a commissioned naval commander, vested with the authority of his military rank, to order and supervise the landing of the troops. Both the Secretary of State and the Secretary of the Navy were informed of these actions, and neither official vested with the superior authority of their offices disavowed, rebuked or revoked the field authority which represented the United States.

The international law of agency recognizes the authority of designated officials to act in the name and with the power of their nation. Particularly during the expansionist but technologically limited diplomacy of the last century, this acknowledgement of agent authority was crucial.

From Hawai'i, for example, diplomatic messages required 7-14 days to travel from Honolulu to Washington, D.C. The shortest route was by steamer from Hawai'i to California, and then to telegraph the essence of the message. A complete letter or diplomatic report covered the same first leg, and then travelled by train for another five days.

"Private wars" conducted by ambassadors (a rank which the U.S. State Department did not establish until 1894, previously believing it smacked of monarchial pretensions) or naval officers were outside local possibilities. The authorizing government was responsible for the actions of its agent -- whether it approved or disapproved of such actions.

If approved, nothing more was required. If disapproved or successfully contested by a harmed party, reparation was a preferred alternative to unnecessary war. Such reparations, for example, were paid by Great Britain to the United States after the Civil War for damages inflicted by English flag ships.

The national dispute, was never over whether the officials involved had the authority of the United States to do as they did. But whether such authority had been rightly or wrongly exercised.

This distinction is particularly crucial to understanding the profound misinterpretation presented in the next Volume I conclusion:

> "...o President Cleveland, inaugurated just after the landing of United States forces, dispatched Representative Blount to investigate the events. His report blamed the American Minister John L. Stevens for the revolution. The United States Senate then commissioned the Morgan report, which reached an almost opposite conclusion. The Commission believes the truth lies between these two reports..."

In contemporary understandings of historical documents, significant discrepancies can occur when secondary source judgments are incorporated without an appropriate first-hand review of the materials.

The "opposition" between the Blount and Morgan reports is over whether the actions of Stevens and Wiltse abused their authority and that of the United States, not a contention that they did not have the apparent authority to act.

Volume I misuses and misconstrues the import of the two reports, and comes to a profoundly mistaken conclusion. Regardless of which report is used, the issue being examined by the Commission is whether Stevens and Wiltse were authorized in their actions and whether their actions resulted in the overthrow of the Kingdom.

Blount and Morgan agree on those particulars: the authority was there -- they differ on whether it should have been exercised as it was. They concur that Stevens, Wiltse and the military presence of the United States were the prime cause for the success of the overthrow -- they differ on whether the United States should repudiate or reap the consequences of those actions.

This detailed review of pertinent agreements between the reports is covered in Chapter 3 of this volume. For the purposes of this Commission, "the truth does not lie between the two reports," because the relevant material is identical in both reports.

On another page Volume I offers this summary regarding the overthrow of the Kingdom:

> "...Based upon the information available to it, the Commission concluded that Minister John L. Stevens and certain other individuals occupying positions with the U.S. Government participated in activities contributing to the overthrow of the Hawaiian monarchy on January 17, 1893. The Commission was unable to conclude that these activities were sanctioned by the President or the Congress. In fact, official government records lend strong

> support to the conclusion that Minister Stevens' actions were not sanctioned..."

There was the opportunity after the final Commission meeting in March, to seek out additional information necessary to the conclusions of the Final Report. This Volume, for example, availed itself of additional archival and library resources in the preparation of this Final Report.

However, that willingness to pursue and examine additional materials -- particularly if such an effort requires independent research -- has not been a part of the approach or the methodology endorsed by Volume I.

There is also the frustrating tendency of using vague, or even contradictory language in the formulation of the conclusions and recommendations to mislead the reader.

In this instance, the use of the word "sanction" is left with no clear definition of the intended meaning: whether it meant "approval" or "disapproval" of actions taken.

Let us, therefore, examine both possible meanings of the conclusion.

First, the idea that the actions of Minister Stevens, of Commander Wiltse, Lt. Swinburne, and the 159 American marines and sailors were approved by higher authorities.

To broach this possibility of approval, it is necessary to clarify another area of confusion present in the cited portion of the summary: who is "the" President or "the" Congress being referred to, in relationship to which "sanction."

This distinction is a critical one -- for the appointment, delegation of authority, and particular sanction reflected, at the least, two Presidents. Benjamin Harrison and Secretaries of State Blaine and Foster were in office from 1889 until March 4, 1893. On that date, Grover Cleveland was inaugurated the President and Walter Q. Gresham was named Secretary of State. And "the" Congress experienced significant changes in composition and responses to the "Hawaiian question" every few years.

The approval of Minister Stevens and other governmental officials acting in their official capacities was forthcoming in the Harrison Administration.

As traced in detail in Part I, Chapter 2 of this Volume II, Blaine had encouraged two ministers in Hawai'i, through confidential correspondence, to be alert and supportive of efforts towards American annexation of the Islands. These letters spanned his tenure under President Chester Arthur in 1881 through his retirement from the Harrison Administration in 1892. His sentiments were not only expressed to his diplomatic officers, but also shared with Chief Executives.

Further, there was no "sanction" of disapproval by the Harrison Administration after notification of the actions and involvements of American officials in Hawai'i. Instead, just the opposite occurred: with only three weeks left in office, the treaty of annexation of Hawai'i was drafted, negotiated, and submitted to the Senate of the United States for approval.

If we now consider the sanctions of "disapproval" levied by the succeeding Administration, the evidence is far more explicit and conclusive.

Grover Cleveland initiated a series of actions after his re-election as President. First, he withdrew the Treaty of Annexation from consideration from the Senate pending an investigation. He dispatched James Blount to the Islands as his Special Envoy, empowering him to conduct a full and open review of the circumstances and events of the overthrow.

Upon Blount's arrival in Hawai'i -- seeing that the flag of the United States had been raised as a "protector" of the Provisional Government with the occupation of the Island Government Building by the troops which were first landed in January and were not withdrawn -- he ordered the American flag taken down, the protectorate ended, and removed Stevens as Minister.

All of this occurred before Mr. Blount had concluded his investigation. This reaction was to the impropriety and illegality of American actions subsequent to the Queen's yielding of her authority, and Minister Stevens recognition of the Provisional Government.

Also, President Cleveland moved to transfer and discipline Commander Wiltse. As a consequence, Wiltse resigned his commission and left the naval service.

With the submission of Mr. Blount's Report to Secretary of State Walter Q. Gresham and President Cleveland, an Executive Message to Congress regarding the Hawaiian overthrow was transmitted. This Message, in eloquent and strong terms, condemned the actions taken by American officials and urged that the Queen be restored to her throne and that the United States Congress do all in its power to repair the damages inflicted.

Because of the divided opinions of the Congress on the issue of annexing Hawai'i, the Senate Foreign Relations Committee conducted its own investigation of the overthrow.

Although there are fundamental questions about the nature of the Senate investigation, and its obvious bias to justify annexation, its contents are even more damning than Blount's as an assessment of the role played by Stevens and Wiltse.

Surely, therefore, there were adequate "sanctions" of either stripe to satisfy some finding on the relative positions of the Presidents and of the Congress. And just as clearly, those records indicate that the judgment of the period was only divided on the outcome, not on the events or authority exercised.

Based on this analysis, and the discussion in chapters 1-4 delineating the differences and concerns capsulized in this section, we cannot agree that the United States does not bear responsibility and culpability for the overthrow of the Kingdom of Hawai'i in 1893.

Included in this dismissal of possible Native Hawaiian claims for compensation is an examination of existing common law and statutes relating to aboriginal and recognized title. As special legislation, these precedents are directly linked to the traditions, experiences and histories of other Native American peoples. Alaskan Natives also did not meet these stringent standards of aboriginal title, that is why the Alaskan Settlement Act was required.

Such legislation is not set only in the legal, but also the moral sense of justice. Clearly, Native Hawaiians would not conform with standards established for others: Native Hawaiians are not American Indians.

Native Hawaiians have a unique and different set of conditions and circumstances meriting Congressional review. However, the basis for that review is the same as that which impelled national attention and redress to the claims of American Indians and of Alaskan Natives, a call to American justice.

Native Hawaiians have claims of conscience.

The Native Hawaiian Trusts

Issues connected with American annexation of Hawai'i may be broadly grouped as: 1) the unusual circumstances surrounding the process of annexation; and 2) whether the terms and conditions of annexation violated Native Hawaiian rights. These concerns will be addressed separately.

The following finding appears in Volume I, Part II, of the Conclusions and Recommendations section:

> "...o In 1897 Hawaii's new government and the United States entered into an agreement that Hawaii would be annexed to the United States. The annexation question was submitted for consideration by the Hawaii legislature. In the United States, it was passed by Joint Resolution of both Houses of Congress, rather than as a Treaty requiring a two-thirds majority of the Senate. President McKinley's concern to secure a foothold in the Pacific for the United States in the face of the Spanish-American War prompted use of a Joint Resolution..."

At the time that the Treaty for Annexation was submitted to the Senate, there was not even a hint of the Spanish-American War. Prolonged hearings on the merits or disadvantages of American annexation of the Islands centered on:

1) the Constitutionality of acquiring overseas territory; the Social Darwinist contention that people of the tropical regions were unfit for democratic principles; and that Asiatic and Polynesian majority of the population were unassailable; and

2) opposition to the proposed annexation was so strong that the necessary two-thirds vote of the Senate was viewed as lacking.

It was not the threat and haste of impending war which prompted the annexation by resolution utilized in the acquisition of Hawai'i.

The decisive factors affecting American annexation were:

1) a fifty-five year policy periodically-enunciated and urged by officials of the State and Navy Departments regarding the strategic importance of Hawai'i to the safety and protection of the continental expansion occurring in the United States;

2) the consolidation of continental expansion by the admission of the remaining West Coast territories as states, the completion of a trans-continental railroad and telegraph system, the economic innovations and consequences of the industrial revolution; the proposed construction of the long-awaited Panama Canal and trans-Pacific cable to better link Atlantic and commercial interests to the markets of the Far Pacific; and

3) the conviction that Hawai'i was manifestly destined to be a part of the United States. This destiny was intensified by recently articulated political beliefs that naval power and strength was necessary to the future greatness of the United States.

Although the findings of Volume I at least note the departure in the annexation by resolution procedure, this admission is not addressed as a possibly violative manner of approval. That concern is answered by inference in the parenthetical comparison with the use of a resolution to achieve statehood for Texas.

What is less honest is the total avoidance of the question regarding the lack of popular consent to annexation. No other territory or state has ever been denied the right to formally ratify annexation.

The evasion of a plebescite in 1893 would seem to be the same basis for the evasion of the question in Volume I: annexation was concluded as it was because the majority of the citizens of Hawai'i would not have ratified the transfer of sovereignty and lands which occurred.

Dodging this central abridgement of American precedent, Volume I prefers to address the peripheral and irrelevant:

> "...o Determining if any native Hawaiians signed annexation documents is difficult without extensive genealogical research. An estimate is that six native Hawaiians were in the Hawaiian legislature when it adopted the 1894 Constitution calling for annexation..."

This conclusion is faulty in a number of respects:

1) there is a misleading confusion between numbers and principle. What if we estimate that all of the members of the legislature signed the annexation document -- that would still mean that 48 individuals and their will was being substituted for the rights of 20,000 eligible male voters.

2) the adoption of the 1894 Constitution by the legislature, regardless of its ethnic composition, was not the means for signifying consent to the negotiations for annexation. Legislative consent to annexation was embodied in a Joint Resolution adopted by the legislature of the Republic on June 16, 1897.

This combined lack of historical accuracy and avoidance of the fundamental concern is characteristic of Volume I's conclusions.

Although we are of the opinion that these legalistic difficulties were "cleared up" by the plebescite and ratification of the terms of statehood, this lack of public support at the time of annexation has a direct and significant impact on the omission or mention of protection of Native Hawaiians' rights and land interests when sovereignty and lands were ceded to the United States in 1898.

If the method of inquiry is structured as "if no law exists, then no law should exist, therefore no law exists" the entire deliberative process is avoided. Native Hawaiians are not American Indians. However, the parallels between the existing Native American claims legislation and precedents is that the Congress is willing to consider measures which have their bais in justice and a moral sense.

The opportunity for this ethical discussion, however, is precluded by a strict and improperly applied existing legal standard.

For these reasons, we cannot agree with the findings and conclusions regarding the possible claims of Native Hawaiians as considered in Volume I.

THE NATIVE HAWAIIAN TRUSTS

Congressionally-created

There are two trusts which name Native Hawaiians, as defined in the Hawaiian Homes Act, as beneficiaries: the "Ceded Lands Trust" established by Section 5(f) of the Hawai'i Admissions Act of 1959, and the Hawaiian Homes Act of 1920.

Neither of these trusts is adequately assessed or considered in Volume I. Of particular concern is that both of these trusts may have been violated or used for non-beneficiary purposes.

Our concerns and the omissions of Volume I are discussed in Part II of Volume II.

NATIVE HAWAIIAN NEEDS

The scope and depth of Native Hawaiian social and economic needs is well-covered in Volume I.

However, the fundamental area of disagreement here is with the nature of proposed remedy or assistance in these areas. Having listed all of the statistical profiles pointing to a profound social need, Volume I then proceeds to name Native Hawaiian agencies and organizations as the primary group with the responsibility of providing assistance. Again, there is that tendency towards the circular argument; the Native Hawaiians need help, let the Native Hawaiians help the Native Hawaiians.

More than insensitive, that approach verges on the cruel.

Thus, although we do not disagree with the findings and conclusions of this section, we have significant differences over the proposed recommendations.

PART I

THE OVERTHROW OF THE KINGDOM OF HAWAI'I

When Captain James Cook sailed from Portsmouth on his Third Voyage to the Pacific, he carried a letter of safe passage signed by Benjamin Franklin. This letter was to protect Cook's scientific mission from possible involvement in the hostilities existing between England and the newly--declared independent United States. 1/

From the instructions he had received on July 8, 1776, Cook followed the traditional route across the Atlantic and around the Cape of Good Hope. Sailing into the South Pacific, Cook touched first at Tahiti. Thus resupplied with food and water, he marked a course south of Australia. 2/

Much of the information and maps which guided Cook were incomplete. The full extent and contents of the Pacific Ocean were still unknown. 3/ Cook's mission was to correct many of the deficiencies, and to resolve persistent questions about the area.

Part of his instructions were to search for the fabled Great Southern continent and to explore the unknown western coast of America for the Northwest Passage was thought to link the Atlantic and Pacific Oceans. These quests proved futile. But by following a roughly diagonal course southeast to northwest across the Pacific, Cook chanced on the Hawaiian Islands.

Assessing his find, Cook described the Islands as "...(a) discovery which, though last, seemed in many respects to be the most important made by Europeans throughout the Pacific area..." Continuing in his Journal, Cook's first thought was that:

> "...Spain may probably reap some benifit [sic] by the discovery of these islands, as they are extremely will [sic] situated for the ships sailing from New Spain to the Philippine Islands to touch and to refresh at, being about midway between Acapulco and the Ladrone Islands..." 4/

What Cook could not know in 1778, was that the major contenders for influence over the Islands would be England and the United States.

At the end of the American War of Independence, the United States began to expand its commercial activity. Freed of the demand and trade burdens imposed by the former Mother Country, the new nation joined the international competition for markets.

The naval superiority of England in the Atlantic was a factor in American shipping interests exploring commercial potential over Pacific routes. This shift was especially noticeable in the whaling industry, beginning with British blockades established during the War of 1812.

Preoccupied with continental expansion, little national interest was focused on dollars spent for an American navy. Unlike the Europeans powers, with their navies and overseas networks of colonies and trading posts, the United States set explicit territorial limits to international policies and these boundaries were generally confined to the North American continent.

During this first quarter of the 19th century, European and American presence in the Pacific shared striking similarities: both were primarily represented by missionary and merchant interests. For the United States though, even this interest was confined to Hawai'i.

The Monroe Doctrine was the first enunciation of this pattern in the Western hemisphere and asserted a primacy of American interest over that of other nations. The extension of this hemispheric policy to Hawai'i was articulated in the Tyler Doctrine of 1843:

> "...the United States was willing that the Hawaiian government be independent...but should events hereafter arise to require it [the United States] to make a decided remonstrance against the adoption of an opposite policy, it will be done..." 5/

The immediate provocation for this declaration was the successive occupation of Hawai'i by French and then

English warships. The Tyler Doctrine was announced after the protectorate imposed by Captain Paulet was repudiated by England. France and England signed a Convention assuring their mutual recognition of Kingdom sovereignty and independence, pledging to honor the Pacific nation's integrity if the other would. The United States was invited to be a signatory to the agreement, but refused.

Typically, the United States denied any arrangement which would impose and "entangling alliance" on national interests. England and France, however, maintained their neutrality towards the Kingdom.

In the next decade, this American stance would gain strength as continental expansion reached the West Coast, proposals for an isthmian canal linking the Atlantic and Pacific, and an expansion of trade opportunities in the Orient.

After the Mexican-American War (1842-43), the United States purchased California. A year later gold was discovered, and a year after that, California was admitted as a state in the union.

In 1851, U.S. Navy Admiral S. F. DuPont discussed the feasibility of the canal, and then linked Hawai'i to the future defense needs of the nation:

> "...It is impossible not to estimate too highly the value and importance of the Sandwich Islands...Should circumstances ever place them in our hands, they would prove the most important acquisition intimately connected with our commercial and naval supremacy in those seas; be that as it may, those islands should never be permitted to pass into the possession of any European power..." 6/

In 1854, Commodore Perry successfully completed his mission, and opened Japan to Western trade. This same year, the United States seriously considered the formal annexation of the Hawaiian Islands.

Kamehameha III, the last of the Kingdom's rulers to know the childhood of a traditional native royal prince, signified his inability to continue coping with the strains of international competitions. He authorized a secret delegation to indicate his interest in a transfer of sovereignty.

A treaty of annexation was negotiated, but remained unratified when hesitation from the State Department was made known about the admission of Hawai'i as a state and the King's death.

By the terms of this treaty, however, this transfer of Kingdom public lands and sovereignty would have been effected with a consideration of:

> "...sum of three hundred thousand dollars ($300,000) as annuities to the King, the Queen, the crown prince, those standing next in succession to the throne, the chiefs, and all other persons whom the King may wish to compensate or reward,
>
> As a further consideration for the cession herein made, and in order to place within the reach of the inhabitants of the Hawaiian Islands the means of education, present and future, so as to enable them the more perfectly to enjoy and discharge the rights and duties consequent upon a change from monarchical [sic] to republican institutions, the United States agree to set apart and pay over for the term of ten years the sum of seventy-five thousand dollars per annum, one-third of which shall be applied to constitute the principal of a fund for the benefit of a college or university,..." 7/

The accession of King Kamehameha IV, however, ended the negotiations, because unlike his uncle, he felt prepared for the responsibilities of a changing Kingdom. What most troubled the United States about his reign, however, was the reassertion of a strong royal identification with England. Queen Emma who was part-English, was instrumental in securing an Anglican bishop for a new Cathedral in Honolulu, and in 1866 traveled to London to attend the Royal Jubilee of Queen Victoria.

American attention to these developments, however, were both intensified and distracted by the Civil War. The causes for the distraction are obvious. However, during this War Between the States, England was sympathetic to the Confederacy and had fired on Union Ships attempting to break the blockade of the cotton trade vital to English textile mills.

After the Civil War, Britain paid reparations to the United States for these actions. However, the tense relations of the two nations, which were never truly healed after the American Revolution and the War of 1812, were again strained.

Ironically, cotton grown in Hawai'i had been a partial replacement for the Southern crops necessary to Northern textile mills, another albeit not significant emerging divergence between the interests of the Kingdom's government and Island commercial enterprises.

This divergence would become critical, however, in the development of Hawaiian sugar plantations.

American interest and growing concern for a Pacific defense post in Hawai'i soon joined sugar interest in a reciprocity treaty between the two nations. Secretary of State Seward, in an 1886 message to the resident Minister in Hawai'i wrote:

> "...that if a reciprocity treaty at any time be made with this Government a fee simple to a piece of land at this port [Pearl Harbor] sufficient for a wharf and buildings for a naval depot and also for a dry dock would be made one of the conditions of this treaty..." 8/

Seward's message was received by James McBryde, and American citizen living in the Islands, with a sugar plantation on Kaua'i.

The anticipated treaty failed, a victim of Seward's concern that reciprocity would delay annexation, and a Congressional resentment that the United States was being asked to pay for privileges which they assumed were already theirs. U.S. Senator Fessanden summarized that sentiment when he said:

> "...it is folly to pay for a thing we already have...that the power and the prestige of the United States is sufficient to assure the concession of whatever naval and commercial privileges are needed in the islands..." 9/

Secretary Seward accomplished a significant aspect of his proposed defense perimeter for the nation with the purchase of Russian Alaska. Another foreign nation was effectively removed from the Western hemisphere, and American interests consolidated with territory and control.

In 1872, Admiral A. M. Pennock, Commander of the North Pacific Squadron, General John M. Schofield, Commander of the U.S. Army in the Pacific, and Brigadier General B. S. Alexander were steaming to Hawai'i aboard the U.S.S. California under secret impositions of the War Department. Ostensibly these military men were to arrive in Hawai'i on holiday - but their mission according to secret orders was:

> "...for the purpose of ascertaining the defense capabilities of the different ports and their commerce facilities, and to examine into any other subjects that may occur to you as desirable, in order to collect all information that would be of service to the Country in the event of war with a powerful maritime nation...it is believed the objects of your visit be regarded as a pleasure excursion which may be joined in by your citizen friends..." 10/

Pearl Harbor, Schofield Barracks, Fort Armstrong, and other military staging areas on O'ahu and the neighbor islands were mapped and pinpointed during this survey. This mission and its report were kept secret until 1897, when they were released to Congressional committees considering the annexation of Hawai'i. The Navy Department however, must have shared this information with the State Department since its contents were discussed in later diplomatic correspondence.

Four years later, the long-awaited reciprocity treaty was approved by both the Kingdom and the United

States, with a provisional designation of Pearl Harbor as an American defense site.

The final quarter of the 19th century marked the industrial revolution of the United States. The greatest movement of people known in the history of the world occurred, as European immigrants entered the United States. Trans-continental railroads and telegraph systems crossed the country and joined both coasts of the nation.

In Europe, the consolidation of traditional royal regions into modern nation states was formalized. The Austro-Hungarian Empire was defined, Prussia and Bavaria were joined into the German nation. As confidence, pride, and national goals emerged, so did more intense competitions among nations.

The expansion of navies and nations into the Pacific, where steam-powered ships now required coaling stations more than fresh water from Pacific ports, paralleled the American interest in Hawai'i.

These impulses were also aided by the completion of the Suez Canal, a significant shortening of the distance from European ports to the now-global trade interests of the Orient and the North American continent.

In 1874, England annexed Fiji. In 1884, Germany acquired empire for the first time, and annexed northeast New Guinea and the newly-named Bismarck Archipelago. Three years later, a joint French-English-American commission established a protectorate over Samoa.

The renewal of the American Reciprocity Treaty with the Kingdom of Hawai'i was negotiated in this context of increasing European domination of the Pacific. Now, the American imperative was not just the exclusive use of Pearl Harbor, but the assurance of the "cession of Pearl Harbor in perpetuity." 11/

Kingdom domestic politics and policies split on the wisdom of such a loss of territory and sovereignty to the United States. The planter oligarchy, economically-dependent on the sugar bounty and often holding a dual Hawaiian-American citizenship, strongly endorsed the new provision. Hawaiian nationalists just as strongly resisted.

The issue was to be resolved by the vote of the Kingdom Legislature.

Although other factors have been considered, too little attention has been focused on the inter-action of American military objectives and planter interests in the events which followed in the Kingdom.

The area of greatest contention between the planter interests and the United States, however, was the importation and international implications of laborers needed to work Island plantations. Predominantly Asian workers from China and Japan were employed, with smaller immigrations from Northern and Southern Europe.

As the planters debated the idea of enlarging this labor pool to British Colonial subjects in India, however, English insistence of their usual extraterritorial jurisdiction became a concern to the United States.

In a communication between Secretary of State Blaine and Hawai'i Minister Comly in 1881, this possibility that:

> "...a large mass of British subjects, forming in time not improbably the majority of its population, should be introduced into Hawai'i, made independent of the native government, and be ruled by British authorities, judicial and diplomatic, as one entirely inconsistent with the friendly relations now existing between us, as trenching upon treaty rights which we have secured by no small consideration, and as certain to involve the two countries in irritating and unprofitable discussion.
>
> In thus instructing you, however, I must impress upon you that much is trusted to your discretion. There would be neither propriety nor wisdom in making such declarations unnecessarily or prematurely.

> If, therefore, you find that the proposed convention is not one with the extreme provisions to which you refer, or if you have reason to believe that your representations of the unfriendly impression which it would make here will be sufficient to change the purpose of the Hawaiian Government, you will confine yourself to ordinary diplomatic remonstrance..." 12/

In a follow-up communication two weeks later, Blaine detailed the geographic limits of American interest in the Pacific, but was vague on the nature of enforcement which the United States would utilize to protect this area:

> "...our domain on the Pacific has been vastly increased by the purchase of Alaska. Taking San Francisco as the commercial center on the western slope, a line drawn northwestwardly to the Aleutian group, marks our Pacific border almost top the confines of Asia. A corresponding line drawn south westwardly from San Francisco to Honolulu marks the natural limit of the ocean belt within which our trade with the oriental countries must flow, and is, moreover, the direct line of communication between the United States and Australasia. Within this belt lies the commercial domain of our western coast..." 13/

Interestingly, Blaine leaves official sharing of the communication with the Kingdom government to the discretion of the Minister, but specifically adds:

> "...(e)ven if the formal delivery hereof to the minister should not appear advisable, it would be well for you to reflect this policy in your conversations with the public men at Honolulu, who will, I am sure, find these view in harmony with the true interest of the Hawaiian Kingdom as they are with those of the United States..." 14/

These exchanges indicate Blaine's concern with 1) possible British interest in Hawai'i, 2) a reassertion of American "domain" in Hawai'i, and 3) the official diplomatic communication between the United States and business interests in the Islands to the disadvantage of the Kingdom government.

This stance assumed even more ominous proportions in 1887. During that year, planter discontent with the excesses of King Kalakaua and his minister Walter Murray Gibson culminated in a demand for the removal of the minister and explicit changes in the Constitution of the Kingdom.

Confronted with this direct challenge to his authority, the King called a meeting of the foreign ministers residing in the Islands, and asked for their support in resisting this move. He was denied.

In addition, the discontent of the planters had reached a new level of assertiveness: a volunteer company of rifles estimated to number 500 armed men had already been formed. Their participation in the escalated coersion of the King into signing the new document gave the "Bayonet Constitution" its name.

Although the United States would not intervene on behalf of the Kingdom's plea, the subsequent armed action by native Hawaiians attempting to revoke the Constitution resulted in the landing of American troops.

Ostensibly called to "protect American lives and property," the willingness of the United States to land troops when a government disposed to certain interests was threatened rather than to the perogatives of the King was not lost on the people.

The Treaty of Reciprocity, with its perpetual cession of Pearl Harbor, was ratified by the Kingdom Legislature later that same year. This Legislature was elected under the new voter and candidate qualifications contained in the Bayonet Constitution.

With the election of Benjamin Harrison in 1888, an Administration of known pro-annexationist leansings took office. Significantly, James Blaine returned as Secretary of State.

In a letter dated March 8, 1892, U.S. Minister to Hawai'i, John S. Stevens wrote Blaine:

> "...I have information which I deem reliable that there is an organized revolutionary party on the islands, composed largely of native Hawaiians and a considerable number of whites and half whites, led chiefly by individuals of the latter two classes. This party is hostile to the Queen and to her chief confidants, especially opposed to the coming to the throne of the half-English heir apparent, now being educated in England, and means to gain its object either by forcing the Queen to select her cabinet from its own members, or else to overthrow the monarchy and establish a republic with the ultimate view of annexation to the United States of the whole islands..." 15/

On November 20, of that year Stevens transmitted a detailed summary of "explosive conditions in the Islands and detailed American interests in the proposed offer of annexation contemplated by factions opposed to the Queen. Stevens noted:

> "...The present Sovereign is not expected to live many years. The princess heir apparent has always been, and is likely always to be, under English influence. Her father is British in blood and prejudices, firmly intrenched here as collector customs, an important and influential office. She has been for some years and still is in England; her patron there who has a kind of guardianship of her, T. H. Davies, is a Troy Englishman, who lived here many years, who still owns large property in the islands, and is a resolute and persistent opponent of American acquisition of Pearl Harbor. Mr. Wodehouse, the English minister, has long resided here; his eldest som is married to a half-caste sister of the Crown Princess, another son is in the Honolulu post-office, and a daughter also is married to a resident of one of the

QUEEN LILI'UOKALANI

Minister Stevens worried that the Queen's heir apparent -- half-English and London-educated -- would bring the Kingdom under British influence if she succeeded to the throne.

PRINCESS KAI'ULANI

> islands. The death of the present Queen, therefore, would virtually place an English princess on the Hawaiian throne, and put in the hands of the ultra-English the patronage and influence of the palace..." 16/

As he concluded:

> "...Which of the two lines of policy and action shall be adopted our statesmen and our Government must decide. Certain it is that the interests of the United States and the welfare of these islands will not permit the continuance of the existing state and tendency of things. Having for so many years extended a helping hand to the islands and encouraging the American residents and their friends at home to the extent we have, we can not refrain now from aiding them with vigorous measures, without injury to ourselves and those of our "kith and kin," and without neglecting American opportunities that never seemed so obvious and pressing as they do now..." 17/

Only in Hawai'i, however, were the issues considered in a peacetime setting. The American role and participation in the overthrow of the Kingdom of Hawai'i, and subsequent annexation, therefore, was not directly cast into the fervor and zealousness of later events.

The Spanish-American War is often mistakenly used as the context for the acqusition of the Islands.

As broadly reviewed in this chaper, however, American policies towards Hawai'i -- particularyly, the military interests involved in Pearl Harbor were the subject and basis of decision-making for fifty years before the overthrow in 1893.

As articulated, then, these policies were in force before the precise dimensions or even possibility of war with Spain.

American annexation of the Islands was a stated policy objective of long-standing. What was less clear were the acceptable means for achieving this objective.

The remainder of this Part I will address the continuing difficulties associated with the course of action used.

Included at the back of this chapter is a chronology of events during this period.

CHRONOLOGY

1776	The American colonies declare their independence from England. Tension and threat of hostilities between the two nations continued with the beginning of the 20th century.
	Captain James Cook embarks on his Third Voyage to the Pacific.
1778	Captain Cook re-discovers the Hawaiian Islands. His crew introduces venereal disease.
1783	Treaty of Paris formally concludes independence of American colonies from England; Western boundary of the United States is set at the banks of the Mississippi River. At this time, English control Canada, France holds territory west of the Mississippi, Spain owns Florida peninsula.
1787	Five-ship merchant fleet is outfitted in Boston: the first American attempt to join Oregon-China trade.
1789	French Revolution begins with the storming of the Bastille.
	First American vessels, part of the commercial fleet, visit the Island on voyage from Oregon to China, The "Eleanor" commanded by Captain Metcalf levels cannon at native canoes as retribution for stolen boat. Companion ship, the "Fair American" is attacked by Hawaiians in retaliation -- only two of the crew are spared, Isaac Davis and John Young. Both marry high-ranking Hawaiian women.

1789	Federal Constitution is adopted and George Washington becomes the first President of the United States.
	England establishes penal colony in Australia.
1791	"Lady Washington" out of Boston lands three crewmen to gather sandalwood in the Islands, beginning crucial new element of China trade.
1793	Louis XVI guillotined in Paris.
1794	Kamehameha I and the Council of Chiefs formally cede the Islands to the protection of England. Captain Vancouver, on his third voyage to Hawai'i, accepts. The protectorate is never recognized by England.
1795	Napoleon begins Italian campaign. His Egyptian campaign begins the next year.
1803	Napoleon sells the Louisiana Territory to the United States for $15 million -- doubling the area of the American nation. Jefferson's act asserts the constitutionality of expansion by purchase.
1804	Cholera or bubonic plague kills an estimated 150,000 Native Hawaiians; approximately half the contact population of the Islands.
1809	Russian Governor of Alaska indicates interest in Hawai'i. A fort is built, Imperial flag is raised and negotiations for the lease of the entire island of Kaua'i are begun, but not consumated.
1810	Kaumuali'i, traditional king of Kaua'i, peacefully cedes his islands to Kamehameha I -- completing the consolidation of the archipelago into a single kingdom.

1812	War between the United States and England. Napoleon begins Russian campaign.
1815	Battle of Waterloo brings defeat of Napoleon.
1818	Chile and LaPlata declare independence from Spain.
1819	Kamehameha I dies. Kapu system is abrogated.
1820	First company of American missionaries sponsored by the American Board of Foreign Missions (ABFM) arrives in Hawai'i.
	President Monroe appoints John C. Jones first "Agent of the United States for Commerce and Seamen," a recognition of significant whaling interests and presence in the Islands.
	Missouri Compromise adopted.
1821	Stephen Austin established first Anglo-American settlement in Texas.
1822	Independence of Brazil.
1823	Monroe Doctrine announced.
1826	First U.S. naval vessel enters Hawaiian port.
1828	Andrew Jackson elected President.
1835	Texas revolts against Mexico.
1836	Treaty between England and Kingdom recognizes sovereignty and independence.
	Second company of American missionaries arrive in Islands.
	Arkansas is admitted as a State.

1839	French Captain LaPlace threatens to fire on Honolulu unless Catholic priests are allowed into the Kingdom and liquor imported. King accedes, repealing "missionary laws."
	Hawai'i's "Bill of Rights" proclaimed and published.
1840	First written Constitution of the Kingdom declared by the King.
	England annexes New Zealand.
1842	French claim the Marquesas.
1843	English Captain Paulet declares the Kingdom a possession of Great Britian. His actions are later disavowed, and Hawaiian sovereignty restored.
	Tyler Doctrine expressing special American relationships with Hawai'i.
1846	Mexican-American war settled by treaty granting California and New Mexico territory to the United States.
1848	Great Mahele creates fee-simple ownership of lands in Kingdom.
1849	Gold discovered in California.
1850	California admitted as a State.
1853	France annexes New Caledonia.
1854	Crimean War
	Opening of Japan to the West.
1855	Treaty of Reciprocity granting sugar bounty to Kingdom growers fails in the U.S. Senate.
1861	Kingdom of Italy established.
	American Civil War begins.

1863	Emancipation Proclamation announced by President Lincoln.
1865	End of Civil War; Lincoln assassinated.
1867	Dual Monarchy of Austria-Hungary established.
1869	Purchase of Alaska from Russia for $15 million.
	Opening of Suez Canal.
1870	Franco-Prussian War
1871	Founding of German Empire.
1874	England annexes Fiji.
1875	British purchase Suez Canal shares.
1876	Reciprocity Treaty between U.S. and Kingdom.
1879	Edison invents the electric bulb.
1882	British occupy Egypt.
1884	Germany annexes northeast New Guinea and Bismarck Archipelago.
1887	Joint French-English-American Naval Commission established over Samoa.
1890	Dismissal of German Chancellor Bismarck.
1892	British protectorate declared over New Hebrides. England annexes Solomon, Gilbert and Ellice Islands.
1893	Kingdom of Hawai'i overthrown.
1895	Discovery of X-rays.
1898	European powers occupy Chinese ports.

1898	U.S. annexes Hawai'i.
	Spanish-American War.
1899	Boer War
1900	Boxer Rebellion in China.
	Organic Act

CHAPTER 2 Three Days in January, 1893

On January 14, 1893, Queen Lili'uokalani was on the verge of declaring a new constitution for the Kingdom of Hawai'i. This document repudiated its 1887 predecessor, the so-called "Bayonet Constitution" forced on King Kalakaua under threat of arms.

Major provisions of the proposed Constitution would have limited the vote to Hawaiian born or naturalized citizens, removed certain property qualifications restricting suffrage, and would have made cabinet ministers subject to removal by the legislature. 1/ As the Queen would later testify:

> "...I proposed to make certain changes in the Constitution of the Hawaiian Kingdom, for the advantage and benefit of the Kingdom, and subjects and residents thereof. These proposed changes did not deprive foreigners of any rights or privileges enjoyed by them under the Constitution of 1887..." 2/

Although her action was supported by the majority of the native population, she was persuaded by her advisors to postpone promulgating the Constitution from a fear of its consequence in the Euro-American community.

As rumors of the Queen's new constitution spread throughout Honolulu, a group of men gathered at the downtown law offices of William O. Smith. 3/ These men, who controlled the economy and much of the private property of Hawai'i, had been instrumental in the forced adoption of the Bayonet Constitution.

Since the economic disruption of the Islands sugar market by the imposition of the McKinley Tariff on Hawaiian sugar in 1891, they had increasingly advocated annexation to the United States. 4/ In 1892, they had secretly formed an Annexation Club and sent one of their members, Lorrin Thurston, to Washington, D.C., to assess the U.S. Government's view of the matter. 5/

Thurston, like others involved in the Club, was the son of American missionaries. Born a citizen of the Kingdom, his intent was to finalize the American influence over the islands.

As Thurston would be assured in Washington, the Harrison administration favored American annexation of Hawai'i.

President Harrison had appointed a former presidential aspirant James G. Blaine as Secretary of State in 1889. Secretary Blaine, primarily responsible for American policy toward Hawai'i during this turbulent period, was an open advocate of annexation, and earlier had written an editorial in the "Kennebec Journal" urging acquisition of Hawai'i. 6/

During his brief service as Secretary of State under the administration of Chester A. Arthur, Blaine had stated U.S. policy as one of maintaining Hawai'i's independence, but with the caveat that if the islands "drift from their independent station it must be toward assimilation and identification with the American system, to which they belong by the operation of natural laws and must belong by the operation of political necessity." 7/

In an 1881 confidential letter to Minister James M. Comly in Hawai'i, Blaine had been even more explicit:

> "...I have shown in a previous instruction how entirely Hawai'i is a part of the productive and commercial system of the American States. So far as the staple growths and imports of the islands go, the reciprocity treaty makes them practically members of an American zollverein, an outlying district of the State of California..." 8/

In that confidential letter, Blaine had also voiced a Social Darwinist view of the decrease in Native Hawaiian numbers.

> "...The decline of the native Hawaiian element in the presence of newer and sturdier growths must be accepted as an

> inevitable fact, in view of the teachings of ethnological history. And as retrogression in the development of the Islands can not be admitted without serious detriment to American interests in the North Pacific, the problem of replenishment of the vital forces of Hawai'i presents itself for intelligent solution in an American sense--not in an Asiatic or British sense..." 9/

This inevitable displacement of Native Hawaiians by "sturdier growths" -- the misapplied "survival of the fittest" social interpretation of the theory of evolution -- held significant foreign policy implications. As Blaine continued in his letter to Comly,

> "...So far as political structure and independence of action are concerned, Hawai'i is as remote from our control as China. This contradiction is only explicable by assuming what is the fact, that thirty years ago, having the choice between material annexation and commercial assimilation of the Islands, the United States chose the less responsible alternative. The soundness of the choice, however, entirely depends on the perpetuity of the rule of the native race as an independent government, and that imperiled, the whole framework of our relations in Hawai'i is changed, if not destroyed..." 10/

The next year, Blaine had run for President and been defeated by Grover Cleveland. Benjamin Harrison had, in turn, bested Cleveland at the polls in 1888.

With the election of a Republican Administration, Blaine also returned as Secretary of State.

Shortly after his cabinet appointment in 1889, Blaine named John L. Stevens U.S. Minister to Hawai'i. Stevens was a former newspaper associate of Blaine, and also from Maine.

In addition, Stevens was known for his less than diplomatic assertiveness as an American minister:

> "...He had been "envoy extraordinary and minister plenipotentiary" to Paraguay and Uruguay in 1870-1874. There he had considered himself a master diplomat in calling in American troops to settle an uprising in Paraguay. He was, however, recalled by the United States government at the request of Paraguay. Later (1877-83) he served in the same capacity as ambassador in Norway and Sweden and was again recalled..." 11/

The past beliefs and behavior of Blaine and Stevens would soon be revealed as little changed by time.

Secretary Blaine wrote to President Harrison on August 10, 1891:

> "...I think there are only three places that are of value enough to be taken, that are not continental. One is Hawai'i and the others are Cuba and Porto Rico [sic]. Cuba and Porto Rico [sic] are not now imminent and will not be for a generation. Hawai'i may come up for decision at any unexpected hour and I hope we shall be prepared to decide it in the affirmative ..." 12/

When Thurston reached Washington, he spoke to Secretary Blaine about annexation. Blaine told Thurston that he considered the annexation of Hawai'i of the utmost importance and since he was unwell, asked Thurston to speak with B. F. Tracy, Secretary of the Navy, "and tell him what you have told me, and say to him that I think you should see the President." 13/ The President would not see Thurston, but authorized Secretary of the Navy Tracy to state that "if conditions in Hawai'i compel you to act as you have indicated, and you come to Washington with an annexation proposition, you will find an exceedingly sympathetic administration here." 14/

The United States Minister to Hawai'i, John L. Stevens, was also open in his endorsement for American annexation of the Islands. In 1892 he had written:

> "...Destiny and the vast future interest of the United States in the Pacific clearly indicate who at no distant day must be responsible for the government of these islands. Under a Territorial government they could be as easily governed as any of the existing territories of the United States...I can not now refrain from expressing the opinion with emphasis that the golden hour is near at hand..." 15/

Emboldened, but evidently not entirely satisfied by his visit, Thurston wrote a long memorandum to Blaine after his return to Hawai'i. In his memo, Thurston outlined island conditions which he felt would eventually culminate in "revolution and disturbance."

What would happen then? According to Thurston:

> "...Every interest, political, commercial, financial and previous friendship points in the direction of the United States; but they feel that if they cannot secure the desired union with the United States, a union with England would be preferable to a continuance under existing circumstances..." 16/

On January 15, 1893, the Committee of Public Safety - first formed to draft and force the adoption of the Constitution of 1887 - met again. This day they passed a motion proposing annexation to the United States. 17/ A special subcommittee, led by Thurston and W. O. Smith, immediately visited Minister Stevens to seek his support.

According to Smith, Stevens replied to the request for aid by stating that troops on board the U.S.S. Boston, anchored in Honolulu Harbor, "would be ready to land any moment to prevent the destruction of American life and property, and in regard to the matter of establishing a Provisional Government, they of course would recognize the existing government whatever it might be." 18/

From the nature of Stevens' response, the Committee of 13 proceeded with its planning -- now assuming American military and diplomatic support for their efforts. After all, their intent was not truly a revolution, but the fulfillment of annexation.

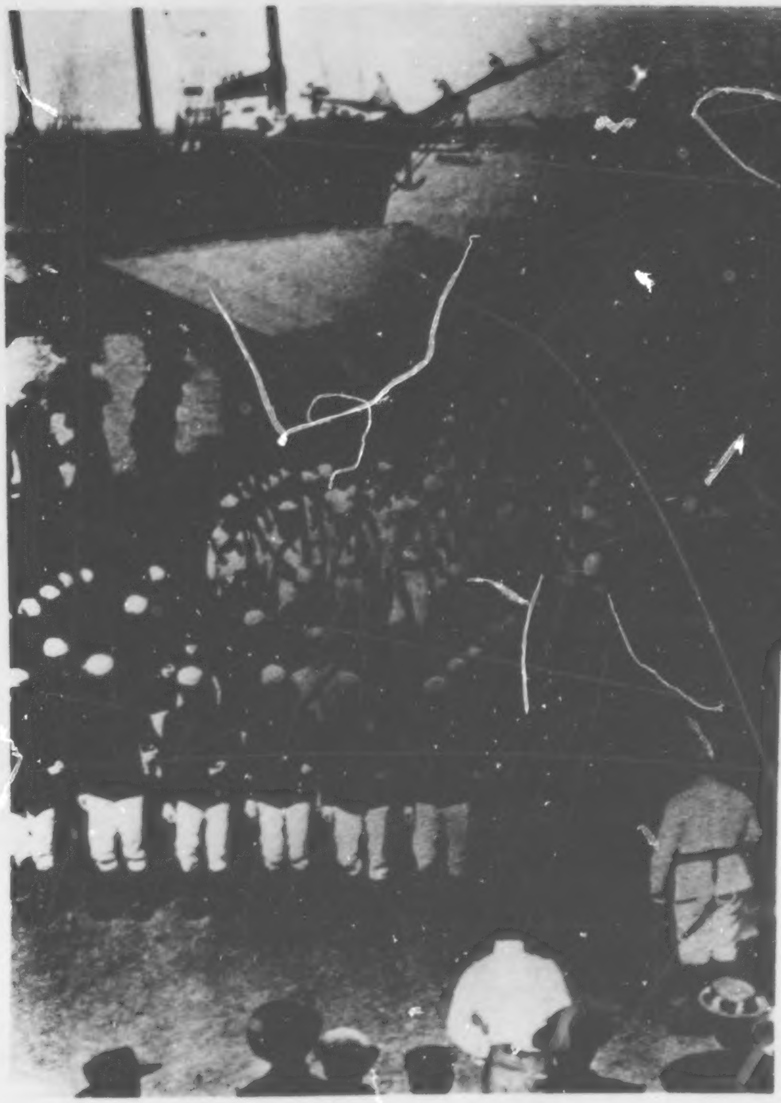
That evening, Committee members formulated plans and drafted documents for a provisional government. Among the men was Sanford B. Dole, Associate Justice of the Hawaiian Supreme Court. Although Dole was not yet prepared to support the overthrow of the Queen, he assisted in drafting the provisional government's documents. 19/

Early Sunday, January 15th, Thurston met with two members of the Queen's Cabinet. Aware that the Queen had decided not to declare a new Constitution, Thurston informed them that the Committee of Safety would not let matters rest and intended to declare the throne vacant. In an attempt to head off further trouble, the Queen's Cabinet prepared a proclamation for her signature stating that the matter of a new constitution was at an end. 20/ Cabinet members also called upon Minister Stevens to learn what actions he would take in the event of an armed insurrection. They left the meeting deeply troubled and convinced that, at the least, Stevens would not publicly support the present Kingdom government.

The Committee of Safety met and called a mass public meeting for the next day. Later, Thurston and Smith again visited Minister Stevens to tell him of the Committee's plans and to ask his support in case of arrest. Smith reports that Stevens "gave assurances of his earnest purpose to afford all the protection that was in his power." 21/

The following morning, Monday, January 16th, the proclamation drafted by the Queen's ministers was issued. At the same time, the Committee of Safety was meeting and sent a letter to Stevens requesting the landing of American troops. The letter stated:

> "...We, the undersigned, citizens and residents of Honolulu, respectfully represent that, in view of recent public events in this kingdom, culminating in the revolutionary acts of Queen Liliuokalani on Saturday last, the public safety is menaced and lives and property are in



American marines and sailors landing in Honolulu. The U.S.S. Boston is in the background.

CAPTAIN WILTSE

> peril, and we appeal to you and the United States forces at your command for your assistance...We are unable to protect ourselves without aid, and, therefore, pray for the protection of the United States forces..." 22/

The letter carefully avoided requesting such protection only for American lives and property.

In the afternoon, two public meetings were held, one called by the Queen's supporters, the other by the Committee of Safety.

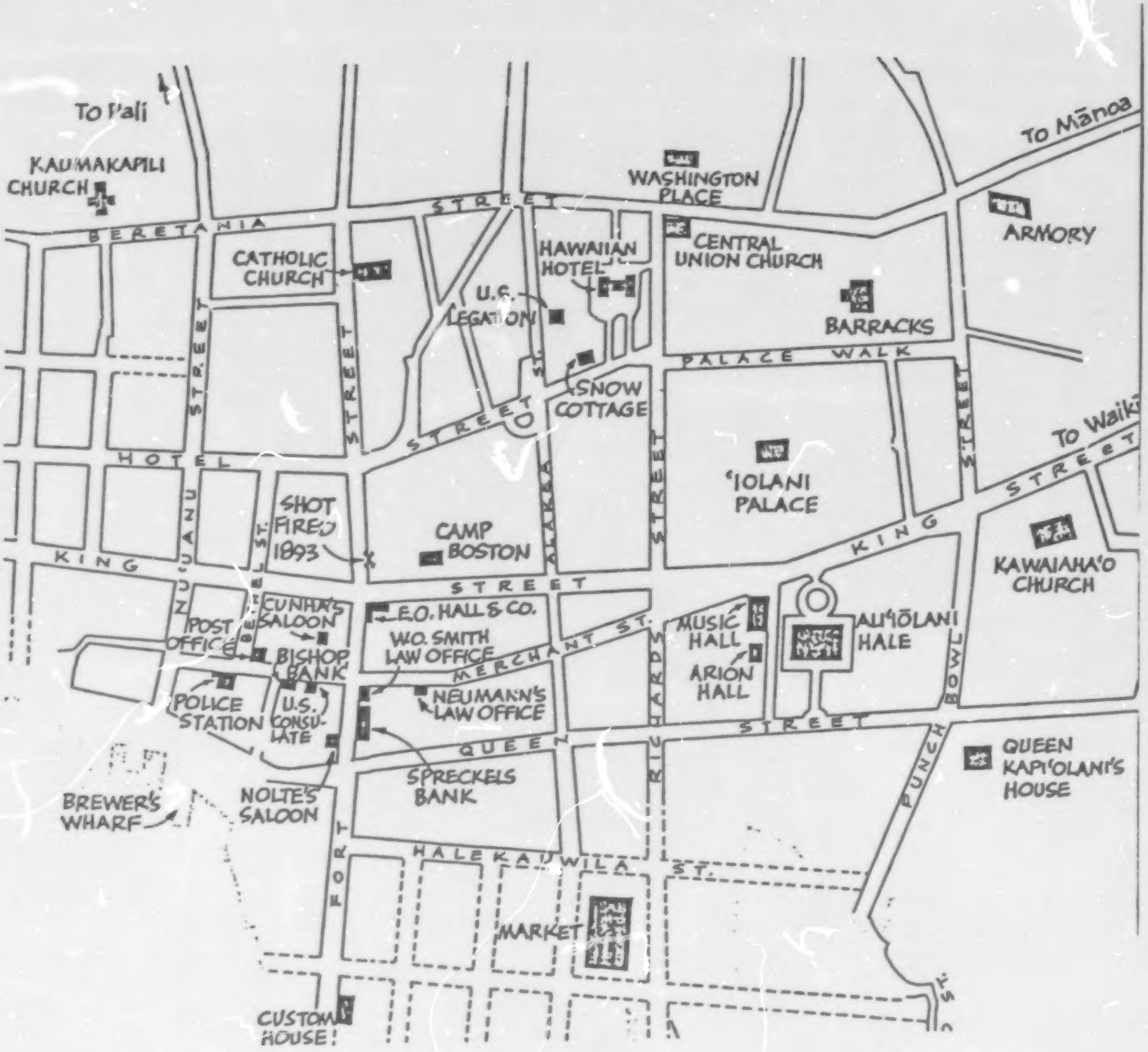
At the Committee meeting, emotions ran high. Thurston spoke first obviously urging the crowd to an action beyond the adoption of a resolution condemning the Queen's proposal of a new Constitution:

> "...She wants us to sleep on a slumbering volcano which will one morning spew out blood and destroy us all...The man who has not the spirit to rise after the menaces to our liberties has not the right to keep them. Has the tropic sun cooled and thinned our blood, or have we flowing in our veins the warm, rich blood which loves liberty and dies for it...?" 23/

Aboard the Boston, preparations already had begun for landing U.S. troops. Around 3 p.m., Minister Stevens formally requested Commander Wiltse to order his troops ashore "as a precautionary measure to protect American life and property." 24/ Between 4 and 5 p.m., a detachment of heavily-armed marines landed in Honolulu. The company of 160 marines marched down Honolulu's main street, past the palace and halted a mere two blocks away. From there they were moved to the American legation.

Also within blocks of the Palace was the Boston itself - a battle cruiser with mounted guns easily capable and within range of leveling the city of Honolulu.

Hours later, at 9 o'clock that night, the troops marched back to their sleeping quarters at Arion Hall -


To Pali
KAUMAKAPILI CHURCH
WASHINGTON PLACE
To Mānoa
ARMORY
BERETANIA STREET
CATHOLIC CHURCH
HAWAIIAN HOTEL
CENTRAL UNION CHURCH
U.S. LEGATION
BARRACKS
PALACE WALK
SNOW COTTAGE
HOTEL STREET
NUUANU STREET
ALAKEA ST.
To Waiki
'IOLANI PALACE
SHOT FIRED 1893
CAMP BOSTON
KING STREET
BETHEL ST.
CUNHA'S SALOON
E.O. HALL & CO.
POST OFFICE
W.O. SMITH LAW OFFICE
MERCHANT ST.
MUSIC HALL
ALI'IŌLANI HALE
KAWAIAHA'O CHURCH
BISHOP BANK
ARION HALL
POLICE STATION
U.S. CONSULATE
NEUMANN'S LAW OFFICE
QUEEN STREET
PUNCHBOWL STREET
QUEEN KAPI'OLANI'S HOUSE
SPRECKELS BANK
BREWER'S WHARF
NOLTE'S SALOON
FORT ST.
RICHARDS ST.
HALEKAUWILA ST.
MARKET
CUSTOM HOUSE
S.T.

HONOLULU, 1892

near the palace and next to the government building. 25/

This movement of troops suggests two things: 1) that the streets of Honolulu were safe enough to risk a night movement of troops; and 2) that the troops were to be quartered away from the American lives and property centered around the legation and in the line of planned insurrectionist actions.

Had Lili'uokalani's troops fired on or moved against the Committee, it would have been impossible to avoid also firing on the American troops. Further, as Stevens later admitted to then Secretary of State Foster:

> "...When the monarchy died by its own hand, here was no military force in the islands but the royal guard of about 75 natives, not an effective force equal to 20 American soldiers..." 26/

As Admiral Skerrett, Commander in Chief of the Pacific Station, later commented:

> "...it was inadvisable to locate the U.S. troops where they were quartered if they were landed for the protection of U.S. citizens and their property, if troops were landed for the protection or support of the provisional government, it was a wise choice..." 27/

That night, the Committee of Safety again met and named the advisory and executive councils for the anticipated provisional government. Sanford Dole was asked to serve as President.

On the morning of Tuesday, January 17th, Dole visited Minister Stevens with a letter setting forth the Committee's intended action. Dole recounts that Stevens "did not say much, but I remember that he said: 'I think you have a great opportunity.'" 28/

At no time, then or in later recorded accounts, is there a mention of any hesitation or cautionary note from Stevens to the Committee about their intentions.

Lili'uokalani, upon receiving word that the Committee of Safety was recruiting men and arms, alarmed by the presence of U.S. troops, sent a personal note to Minister Stevens giving him assurances that the present constitution would be upheld. When no reply was received, the Queen's Cabinet drove to the American legation to appeal to Stevens. But Stevens would give no help and, a Cabinet member later claimed, said he would protect the insurgents if they were attacked. 29/

Meanwhile, the Committee of Safety had completed its statement deposing the Queen, and a volunteer army had been ordered to assemble. Members of the Committee, led by Dole, proceeded to the government building where they took possession without a struggle. From the steps of the building, a proclamation was read declaring that the existing government was overthrown and a provisional government was established in its place, "to exist until terms of union with the United States of America have been negotiated and agreed upon." 30/

The insurgents immediately requested recognition from Minister Stevens, and sometime between 4:20 and 5 p.m., before the Queen and her forces had yielded, Stevens provided it. 31/ This recognition appears to have been premature in at least two respects.

First, the insurgents did not have control of the police station where the majority of the Queen's troops waited. 32/

Secondly, it is clear that Lili'uokalani and her cabinet believed that the United States was lending support to the annexationists.

Immediately upon learning that a provisional government had been declared, the Queen's cabinet sent a letter to Stevens asking whether the United States had recognized the provisional government. Stevens replied that he had. Significantly, Stevens' reply to the Cabinet query was made before his letter of recognition was sent to the provisional government. 33/

By this timing, Stevens further undermined royal government resistance, strengthened the impression that American troops would be used in support of the insurgence - and could still maintain later the fiction that he had not truly recognized the Provisional Government before the Queen yielded.

Lili'uokalani gave this account of January 17th:

> "...At about two-thirty p.m., Tuesday, the establishment of the Provisional Government was proclaimed; and nearly fifteen minutes later Mr. J. S. Walker came and told me 'that he had come on a painful duty, that the opposition party had requested that I should abdicate.' I told him that I had no idea of doing so...I immediately sent for (my cabinet ministers and advisors). The situation being taken into consideration, it was found that, since the troops of the United States had been landed to support the revolutionists, by the order of the American minister, it would be impossible for us to make any resistance..." 34/

As night fell, Lili'uokalani yielded:

> "...I, Liliuokalani, by the Grace of God and under the Constitution of the Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a provisional government of and for this Kingdom.
>
> That I yield to the superior force of the United States of America, whose minister plenipotentiary, His Excellence John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the said provisional government.
>
> Now, to avoid any collision of armed forces and perhaps the loss of life, I do under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives

> and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands..." 35/

At the same time, Lili'uokalani sent a message to Dole; enclosing her provisional surrender of the Kingdom's sovereignty.

Dole signed his acceptance implying concurrence in its contents.

Stevens, however, chose to ignore the course opened by the Queen's message. Rather than acting as a mediator, or accepting the option of declaring a protectorate until further instructions could be received from Washington - he recognized the provisional government as the de facto government.

At 7 p.m., the police station was handed over and a short time later, two hundred and seventy Hawaiian soldiers surrendered their arms.

The diplomatic and consular representatives of other countries did not recognize the new regime until the following day and Great Britain's minister did not officially recognize the provisional government until two days later. 36/

In the following weeks, rumors abounded that native supporters would attempt to take back power. The Provisional Government, not sufficiently stable and lacking the military strength to insure its own existence, again sought the aid and support of the United States.

Although the troops from the Boston had not been withdrawn, the Provisional Government now requested a significantly different military assistance. In a request to Stevens, the Provisional Government stated:

> "...Believing that we are unable to satisfactorily protect life and property, and to prevent civil disorder in Honolulu and throughout the Hawaiian Islands, we hereby ...pray that you will raise the flag of the United States of America, for the protection of the Hawaiian Islands for the time being, and to that end we hereby

> confer upon the Government of the United States, through you, freedom of occupation of the public buildings of this government, and of the soil of this country, so far as may be necessary for the exercise of such protection, but not interfering with the administration of public affairs of this country..." 37/

On February 1, 1893, Minister Stevens responded by placing the Provisional Government under the protection of the United States, pending annexation negotiations, and hoisted the American flag over Hawai'i. 38/ The Marines moved from Arion Hall to the Government Building.

In his telegram of that day to Secretary of State Foster informing him that the Islands had been placed under the protection of the United States, Stevens stated "the Provisional Government of Hawai'i is gaining power and respect. Everying is quiet. Annexation sentiment is increasing." 39/

As usual with Stevens, this assessment was a reflection of his own sentiments regarding the respected and respectable members of the community. The annexation sentiment has constantly increased since:

> "...Nearly all the Germans, the larger proportion of the respectable and responsible English, and almost the entire Portuguese population are warmly for annexation. This inclination of the Portuguese is quite important for they number seven or eight thousand, and are among the most industrious and saving..." 40/

By contrast, the opponents to annexation are characterized as:

> "...the lower class of natives, led by unscrupulous foreigners, of little property, mostly from California, Australia, and Canada, who wish to maintain the Hawaiian monarchy and its corruptions for their own unworthy purposes, and who think their

> opportunities for power and spoliation will be gone if annexation becomes a fact..." 41/

Interestingly, the preoccupation with the decline of Native Hawaiian numbers had been so persistent and emphatic in diplomatic observation, that no vote was ever made as to the actual composition of the Kingdom's population. The 1890 Census counted: 40,600 Hawaiians, 11,200 Europeans, 2,000 Americans, and an Asian total of 27,600; Hawaiian born foreigners 7,500. 42/

As a proportion of the citizens of the Kingdom, further, Native Hawaiians were the overwhelming majority. Although the supporters of the Bayonet Constitution may have dubbed themselves the Reform Party -- their purpose was oligarchic, not democratic.

Secretary of State Foster replied to Stevens, criticizing his actions and disavowing them to the extent that they set the power and authority of the United States over that of the Provisional Government.

However, Foster also authorized Stevens to keep the troops ashore, provided they did not go beyond preserving order and protecting American lives and property. In reality, the situation in Hawai'i did not change after Foster's reply. The flag of the United States continued to fly over the Government Building and American troops continued to occupy that building, thus lending open support to the Provisional Government.

Immediately after Lili'uokalani yielded, a Provisional Government delegation was sent to Washington, D.C., to seek a treaty of annexation. Such a treaty was negotiated and sent to the Senate by President Harrison on February 15th. Harrison asked for prompt and favorable action and denied that the U.S. was in any way involved in overthrowing the monarchy.

Although Harrison and his Administration obviously favored annexation, the American national elections in November, 1892, had returned the Democratic Party to power and Grover Cleveland was the next President. Following the procedures of the time, Cleveland was not to be inaugurated until March, 4, 1894.

Cleveland made his reservations about annexation known, and the Senate deferred action on annexation. The new administration withdrew the treaty "for the purpose of re-examination." 43/

Cleveland sent James H. Blount to Hawai'i to investigate the circumstances surrounding the overthrow of the monarchy. When Blount reached Honolulu, he found the American flag flying and American troops still ashore. He ordered the flag lowered and the troops returned to their ship.

His actions ended nearly two months of American military presence in Honolulu and began a full investigation of the circumstances and American role in the overthrow.

CHAPTER 3 The Blount and Morgan Reports Re-examined

Prior to his appointment as special commissioner to Hawai'i, Blount, a Georgia Congressman, had served as Chairman of the House Committee on Foreign Affairs. Blount had no connection with the Islands and no obvious view on annexation prior to his appointment.

Thurston, though, felt sure of winning the sympathy of the former Confederate officer for the annexation cause. He wrote that:

> "...(a)s a Southerner, he is thoroughly familiar with the difficulties attendant with an ignorant majority in the electorate, and will thoroughly appreciate the situation upon this point..." 1/

Upon Blount's arrival, both the Provisional Government and the Queen sought to gain his friendship. The Provisional Government offered Blount and his wife a house and carriage for the duration of his stay, the Queen sent a carriage and offered the services of her chamberlain.

But Blount accepted none of these offers and took a great care to preserve his impartiality.

After Blount's arrival, the Provisional Government gave him a long list of suggested witnesses. He rejected this, announcing that he would listen to all who wished to be heard, talking with them informally at first and asking some for written statements. 2/ Blount, recognizing that both parties had a desperate case to present, kept his head, and took his depositions with accuracy and candor.

He was hindered in his fact finding mission because key members of the Provisional Government refused to be interviewed. This refusal was a reflection of their response to actions taken by Blount on April 1. After an initial review of the situation, Blount ordered an end to the Stevens-declared protectorate of two months earlier, lowered the American flag, and ordered the troops of the U.S.S. Boston out of the Government Building and back on board ship.

Blount did gain an interview with Henry Waterhouse, a member of the Committee of Safety. 3/ W. O. Smith submitted a written statement and he was aided in its drafting by Henry E. Cooper and James B. Castle, all Committee of Safety members. 4/ In total, Blount interviewed twenty annexationists, five members of the Provisional Government, and two of the speakers at the annexationists mass meeting on January 16th. 5/

After interviewing numerous witnesses from different factions, Blount concluded that Minister Stevens had helped to overthrow the monarchy. 6/ He also reported that the troops from the Boston were landed, not to protect American lives and property, but to aid in overthrowing the existing government. 7/

Based on Blount's report, Secretary of State Walter Q. Gresham laid the blame for the revolution directly on Stevens, advised the President against resubmission of the annexation treaty to the Senate, and recommended that some action be taken to restore the government of Hawai'i. 8/ In an effort to do so, Cleveland sent a new minister to Hawai'i, Albert S. Willis, with orders to express to Lili'uokalani the President's sincere regret for Steven's reprehensible conduct and to ask her to rely on the justice of the United States to undo the wrong. One of the Conditions under which the United States would restore the Queen was amnesty for the revolutionaries. Lili'uokalani however believed that the only form of amnesty which would be proper would be to exile the revolutionaries, for "if they were allowed to remain, they would commit the same offense over again." 9/ Eventually, the Queen modified her views and indicated that she would grant a full amnesty. 10/

However, Willis was unable to convince the Provisional Government to agree to terms. 11/ Ironically, in a letter replying to the President's request to restore the Queen, Dole took the position that the United States could not interfere in Hawai'i's internal, domestic affairs. 12/

Finding himself at an impasse, President Cleveland decided to report his findings to Congress and leave the matter in their hands. Cleveland recounted the events leading to the overthrow and condemned Steven's role in the affair. He called the U.S. "military demonstration upon the soil of Honolulu...an act of war, unless made either with the consent of the Government of Hawai'i or for the bona fide purpose of protecting the imperiled lives and property of citizens of the United States. But there is no pretense of any such consent on the part of the Government of the Queen, which at that time was undisputed and was both the de facto and de jure government." 13/ He noted that when the members of the Committee of Safety took possession of the Government Building and an American citizen read the proclamation deposing the Queen "the one controlling factor in the whole affair was unquestionably the United States Marines, who, drawn up under arms and with artillery in readiness..." 14/ Cleveland, in contrasting the United States' action in the annexation of Texas and "the extraordinary haste...characterizing all transactions" connected with the Hawaiian annexation treaty, stated:

> "...Our country was in danger of occupying the position of having actually set up a temporary government on foreign soil for the purpose of acquiring through that agency territory which we had wrongfully put in its possession. The control of both sides of a bargain acquired in such a manner is called by a familiar name when found in private transactions. We are not without a precedent showing how scrupulously we avoided such accusations in former days. After the people of Texas had declared their independence of Mexico they resolved that on the acknowledgment of their independence by the United States they would seek admission to the Union. Several months after the battle of San Jacinto, by which Texan independence was practically assured and established, President Jackson declined to recognize it, alleging as one of his reasons that in the circumstances it became us to beware of a too early movement, as it might subject us, however unjustly, to the

> imputation of seeking to establish the claim of our neighbors to a territory with a view to its subsequent acquisition by ourselves.' This is in marked contrast with the hasty recognition of a government openly and concededly set up for the purpose of tendering to us territorial annexation.
>
> While naturally sympathizing with every effort to establish a republican form of government, it has been the settled policy of the United States to concede to people of foreign countries the same freedom and independence in the management of their domestic affairs that we have always claimed for ourselves, and it has been our practice to recognize revolutionary governments as soon as it became apparent that they were supported by the people. For illustration of this rule I need only to refer to the revolution in Brazil in 1889, when our minister was instructed to recognize the Republic 'so soon as a majority of the people of Brazil should have signified their assent to its establishment and maintenance;' to the revolution in Chile, in 1891, when our minister was directed to recognize the new Government 'if it was accepted by the people,' and to the revolution in Venezuela in 1892, when our recognition was accorded on condition that the new Government was 'fully established, in possession of the power of the nation, and accepted by the people..." 15/

Cleveland concluded:

> "...(i)f a feeble but friendly state is in danger of being robbed of its independence and its sovereignty by a misuse of the name and power of the United States, the United States can not fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparation..." 16/

In the months following Cleveland's message, the Hawaiian issue was debated and argued in each house of Congress. In February of 1894, the U.S. Senate Foreign Relations Committee, chaired by pro-annexationist Senator John T. Morgan, 17/ held hearings on the Hawaiian question. The Committee was unable to reach a majority opinion, so Morgan issued a report condoning Steven's actions and recognizing the Provisional Government. Morgan's report classified U.S. relations with Hawai'i as unique and not to be judged by the normal precepts of conduct between nations.

Morgan stated:

> "...Hawaii is an American state, and is embraced in the American commercial and military system. This fact has been frequently and firmly stated by our Government and is the ground on which is rested that peculiar and far-reaching declaration so often and so earnestly made, that the United States will not admit the right of any foreign government to acquire any interest or control in the Hawaiian Islands that is in any way prejudicial or even threatening toward the interest of the United States or her people..." 18/

Morgan's report vindicated everyone involved in the Hawaiian affair, except the Queen and her cabinet. Even Morgan, however, did not approve of the establishment of a U.S. protectorate over Hawai'i. The remaining eight members of the Foreign Relations Committee, four Democrats and four Republicans, approved only those portions of the report which coincided with the stands of their respective parties.

On February 7, 1894 the House of Representatives resolved that there should be neither restoration of the Queen nor annexation to the United States. The Senate passed a similar resolution on May 31, 1894.

Most accounts of the Blount and Morgan Reports will assert that they reached opposite conclusions. 19/ From an historical point of view that assessment is accurate. Blount concluded that the behavior and actions of Stevens, the presence and purpose of

American marines on shore, and the hasty recognition of the Provisional Government were legally and morally wrong.

Morgan's Report viewed the same circumstances and motivations, did not dispute that the intention was to cause the overthrow of the Kingdom and to consummate American annexation, and concluded that the actions taken were legally and morally right.

In many respects, the Morgan Report asserts that Minister Stevens and Commander Wiltse could have taken virtually any diplomatic or military action, and have been within the rightful exercise of their authority:

> "...In no sense, and at no time, has the Government of the United States observed toward the domestic affairs of Hawaii the strict impartiality and the indifference enjoined by the general law of noninterference, in the absence of exceptional conditions. We have always exerted the privilege of interference in the domestic policy of Hawaii to a degree that would not be justified, under our view of the international law, in reference to the affairs of Canada, Cuba, or Mexico.
>
> ...the attitude of the United States toward Hawaii was in moral effect that of a friendly protectorate. It has been a settled policy of the United States that if it should turn out that Hawaii, for any cause, should not be able to maintain an independent government, that country would be encouraged in its tendency to gravitate toward political union with this country." 20/

Morgan was willing to forego even the international protocol of initiating a landing of armed troops as acceptable if done for the purpose of protecting that nation's citizens in another country. Even Stevens had advanced that international precept as the justification for his order. Morgan, however, contended that:

> "...It seems that neither Minister Stevens nor Capt. Wiltse, then fully comprehended the fact that the United States had the right, of its own authority, to send the troops on shore for the purpose of supplying to American citizens resident there the protection of law..." 21/

As Morgan concluded, American officials:

> "...have the right to much larger liberty of action in respect to the internal affairs of that country than would be the case with any other country with which we have no peculiar or special relations." 22/

Would that "larger liberty of action" have included acts of war by the United States against the Kingdom?

Morgan avoids confronting the question directly. Rather, he states that by "landing troops in Honolulu there may have been an invasion," but makes a distinction between this invasion and an act of war:

> "...If the Queen, or the people, or both acting in conjunction, had opposed the landing of the troops from the *Boston* with armed resistance, *their invasion* would have been an act of war. But when their landing was not opposed by any objection, protest, or resistance the state of war did not supervene, and there was no irregularity or want of authority to place the troops on shore." (Emphasis added.) 23/

In short the invasion was not an act of war because no resistance or counter force was offered. Had the Queen resisted the superior arms and might of the United States, then the landing of the troops would have been an act of war. Acting to avoid bloodshed, the Queen had acquiesced in an invasion which was not truly an invasion because it was well within the prerogatives of the United States to act with hostility towards the interal affairs of Hawai'i. Or so Morgan reasoned.

Under international law, the Morgan Report is far more damaging an assessment of American actions than the report submitted by Blount.

In international law, the most basic right of a nation is its right to exist. 24/ From this first right, a nation derives all of its other rights: the right to control internal affairs, chose a form of government, make and amend laws, provide for its citizens, and administer its domain. 25/ The right to exist gives rise to certain external rights such as the right to make treaties and conclude special relationships and agreements with other nations. 26/ Undoubtedly, the primary right arising from the right to exist is the right of independence. A corollary duty arising from the right of independence is the principle of non-intervention, the duty not to intervene in the internal affairs or the external sovereignty of another nation. 27/

Native Hawaiians assert that the government formed by and for their benefit was deprived of the most basic right of a nation, the right to exist. This deprivation was accomplished, with the assistance of the United States Minister to Hawai'i and the aid of American troops. Those actions, violated the right to independence of the Hawaiian Kingdom and the principal of non-intervention. In 1893, those actions were condemned by Commissioner Blount, Secretary of State Gresham, and ultimately, by President Cleveland. 28/

Native Hawaiians argue that as a result of intervention by an official representative of the United States government, Hawaiians lost both the internal and external rights and control that are paramount to a sovereign nation. Among those rights were the right to chose a form of government, make laws, oversee the public domain, and and provide for their common good. Moreover, they lost the right to stand as an equal in the international community, to make agreements and treaties with other nations, and to exhibit the external manifestations of sovereignty.

International law also deem acts of state officials and representatives as acts of the state for purposes of determining international responsibility. 29/ Thus, the actions of Minister Stevens, although not specifically directed by the Department of State or

U.S. MINISTER JOHN STEVENS

The lowering of the Hawaiian flag at ceremonies marking American annexation of the Islands in 1898.

President, would be considered an Act of state that would lay international responsibility on the United States. 30/

CHAPTER 4 Claims of Conscience

In view of the history of landholding laws in Hawaii, the overthrow of the monarchy, annexation, and the federal government's entire course of dealing with Native Hawaiians, this section examines whether Native Hawaiians may have a claim for reparations or restitution from the United States.

Although this section draws some analogies to Indian law, it must be clearly stated that the claims made by Native Hawaiians are unique. Consequently, precedents established in Indian law can only provide broad principles. In applying these principles to the claims made by Native Hawaiians, we should look not so much to the technical niceties of the law, but to the basic policies which animate those laws. The lodestar guiding this inquiry should be our society's concept of justice and morality, not some narrow idea of the law as embodied solely in existing statutes and caselaw.

NATIVE CLAIMS AGAINST THE FEDERAL GOVERNMENT

Over the years, a number of different native groups and organizations have sought reparations and restitution from the United States for loss of lands and loss of sovereignty. Generally speaking, few Native American groups have had clear legal claims that could be brought without the assent of Congress. For nearly all Native Americans, including Native Hawaiians, the question is to what extent past losses will entitle them to make claims and recover against the United States. Ultimately, it is Congress who must decide which events of the past ought to expose the government to liability.

In the early twentieth century, Indian tribes who had claims against the federal government were required to seek special jurisdictional acts in Congress in order to sue the United States. The various jurisdictional acts allowing particular Indian tribes to sue the United States resulted in piecemeal litigation and conflicting opinions. The acts were sometimes interpreted narrowly to defeat recovery 1/ and the entire process was slow and expensive. In the period between 1926 and 1945, over 140 claims were litigated, but others were stalled in congressional committees awaiting jurisdictional acts.2/

In 1946, Congress established the Indian Claims Commission and gave it broad jurisdiction to hear tribal claims cases.3/ The Indian Claims Commission Act was prompted not only by the inadequacies of the special jurisdictional acts requirement, but also by the recognition of a moral wrong that needed to be redressed. In debate over the bill, then Congressman Henry Jackson stated:

> Let us pay our debts to the Indian tribes that sold us the land we live on . . . [L]et us make sure that when the Indians have their day in court they have an opportunity to present all their claims of every kind, shape, and variety, so that the problem can be truly solved once and for all . . . 4/

The Indian Claims Commission Act removed the United States' statute of limitations defense and made the government subject to suits for torts and for claims under treaties and contracts.5/ These are matters that courts regularly hear and they are gounded in established law. But the Act also allowed claims based on "fair and honorable dealings, that are not recognized by any existing rule of law or equity" 6/ and permitted tribes to recover for the taking of aboriginal title, previously non-compensable in court.7/ Under the Act, hundreds of millions of dollars were awarded for the taking of aboriginal lands which otherwise would have gone uncompensated.8/ Congress obviously intended the Commission to hear and decide claims that were not strictly "legal" but which had aroused the national conscience.

In addition to affording native groups a forum in which to assert claims, Congress itself sometimes has acted directly to settle native claims.

The Alaska Native Claims Settlement Act of 1971 settled the claims of Alaskan Natives which were based, in part, on aboriginal title.9/ When Alaska was purchased by the United States from Russia in 1867, the acquisition treaty provided that the "uncivilized" tribes would be subject to such laws and regulations as the United States might adopt with respect to aboriginal tribes.10/ In 1884 Congress stated in the Organic Act for the Territory of Alaska that the Indians and other natives should not be disturbed in the possession of any lands actually in their use or occupation or then claimed by them, but that the terms under which they could acquire title to lands would be reserved for future legislation by Congress.11/ Congress took no action and the Alaska Statehood Act in 1958 did not determine the rights of the Alaskan Natives. However, under the terms of the Statehood Act, Alaska could select 103.5 million acres from federal holdings in Alaska for the State's public lands. At the same time, the State was required to disclaim any rights to land in which Alaskan Natives may have had an interest.

By 1968, Alaskan Natives had brought claims, based on aboriginal title, the 1867 U.S.-Russian Treaty, and the 1884 Alaska Organic Act, to ownership of most of Alaska's 375 million acres.12/ These claims prevented the State of Alaska from withdrawing the full 103.5 million acres set under the Alaska Statehood Act. Further some of the claims involved land required for the proposed 789-mile Alaska pipeline, which would transport oil from Alaska's North Slope to port on Prince William sound.13/ Against this background, Congress enacted the Alaskan Native Claims Settlement Act.

More recently Eastern Indians have asserted their claims by invoking the theory that early land transactions between Indians and states or individuals are invalid as a violation of the Indian Trade and Intercourse Act first enacted in 1790.14/ The Maine Indian Claims Settlement Act 15/ and the Rhode Island Indian Claims Settlement Act 16/ are examples of Congressional willingness to deal directly with the claims of Native Americans in order to clarify land rights of both natives and non-natives.

In examining the history of native claims brought against the federal government, two patterns emerge. In some situations, such as the Alaskan Native and Eastern Indian claims, the native groups had, prior to

Congressional involvement, been able to win judicial decisions substantiating some portion of their claims. In other instances, the claims of the native group were not clearly justiciable but struck at the moral conscience of the country. The claims of Native Hawaiians appear to fall into this latter category. Native Hawaiians have not been able to assert their claims in judicial tribunals, barred not only by the doctrine of sovereign immunity and the statute of limitations, but also by the unique nature of their claim. The Native Hawaiian claim does not fit into any of the normally accepted and familiar categories of native claims, such as treaty violation. Yet, arguments advanced by Native Hawaiians may require Congress to face the moral and ethical questions involved and fashion an appropriate remedy.

The following sections of this report analyze four specific arguments advanced by Native Hawaiians in support of reparations and restitution.

THE SOVEREIGNTY ARGUMENT

Some native groups have made claims that they should be given compensation for loss of "sovereignty." Although the courts of the United States have examined the concept of sovereignty as it relates to Indian tribes, that concept does not appear to be applicable to the Native Hawaiian claim. This is true primarily because the Indian tribes came within the territorial jurisdiction of the United States. Early in the history of American jurisprudence it was determined that Indian tribes were "domestic, dependent nations" 17/ exercising inherent powers of a limited sovereignty. Their sovereignty "exists only at the sufferance of Congress and is subject to complete defeasance."18/ In short, Congress appears to have the authority to take away sovereignty of native groups at will. Moreover, Congress has been very reluctant to recognize loss of sovereignty as a compensable claim.

The Hawaiian situation, however, may merit a different treatment since at the time the Native Hawaiian government was overthrown, it was fully recognized as a member of the international community. Hawaiian natives were citizens of an organized, self-governing nation whose status as an independent sovereign was acknowledged by other nations. As early as 1826, a treaty was negotiated, although never ratified, between the United States and the Hawaiian Kingdom.19/ On December 30, 1842, American President John Tyler officially recognized Hawaii as a sovereign nation and declared a policy of maintaining Hawaiian independence. In recognition of this independence, Congress appropriated monies for the appointment of a minister from the United States to Hawaii.20/ Later, several treaties between the United States and the Kingdom of Hawaiian were signed and two of these treaties were still in effect at the time the Hawaiian government was overthrown.21/ The loss of independence and sovereignty, once affirmed and protected by the United States, appears to form the crux of the Native Hawaiian claim. Under these circumstances, analogs drawn from international law rather than Indian law may be more appropriate. Because the revolution ultimately succeeded, the United States may have no "legal" obligation to the people whose government was overthrown. Any claim would have to be brought in an international tribunal. However, since the United States has never agreed to submit the issue to an international court of law, it cannot be held legally accountable without its consent.22/

Native Hawaiians also assert that their losses resulted not solely from the unauthorized acts of Minister Stevens, but also from the entire process leading to the annexation of Hawaii. As early as 1887, a significant number of Native Hawaiians had been disenfranchised because of the voting qualifications contained in the 1887 Constitution forced upon Kalakaua by a small, but powerful, group of men. It is clear that the moving force in overthrowing the monarchy was this same group of businessmen - all of whom were American or European.23/ There was no pretense on their part that their cause was supported by the native population.

When annexation did not immediately materialize, the Republic of Hawaii was established. Again, there was no significant representation of native views in forming that government 24/ and there was minimal participation by natives once that government was formed. On Oahu, for instance, only 509 natives registered to vote in the legislative elections.25/ Moreover, the Republic's constitution set such strict voting qualifications, including property restrictions, that few Hawaiians could have participated even if they had so chosen. In 1895, when an attempt was made to restore the monarchy, natives constituted the overwhelming majority of those arrested for participation in the "rebellion."26/ In 1897, when an annexation treaty appeared imminent, natives presented petitions and resolutions to Congress as well as the Republic's President Dole protesting annexation and asking, at the very least, for a vote on the subject.27/

The Senate of the Republic of Hawaii ratified the 1897 Treaty of Annexation on September 9, 1897. However, it was not until the summer of the following year that the Joint Resolution of Annexation passed both houses of Congress and was signed on July 7th. The Joint Resolution made no provision for a vote by the natives or other citizens of Hawaii to accept annexation as had been done in the case of Texas. It was merely assumed that the action of the Republic's Senate in ratifying the Treaty of Annexation almost a year previously was sufficient to show assent of the people.28/ Yet, it is well documented that natives overwhelmingly opposed annexation.

Under the terms of annexation, the former Government and Crown Lands became the property of the federal government, and while primary control of the lands rested in the Territory, they were always subject to withdrawal for federal utilization. Hundreds of thousands of acres were set aside for military use with no regard to the cultural or religious significance natives attached to the land. Even the attempt in 1920 to "rehabilitate" the Hawaiian through the homesteading program was colored by concern for sugar interests, so that natives received lands of marginal value.

Our examination of the factual situation at the time the Hawaiian monarchy was overthrown and the participation of Minister Stevens and American troops in overthrowing the monarchy has been presented in an earlier section of this report. Based on that examination, the argument that the United States violated the Hawaiian Kingdom's right to independence as well as the international law principle of non-intervention in the internal affairs of another country has merit. This violation may have been compounded by the United States' subsequent acquisition of the Government and Crown lands of Hawaii. The fact that these actions were taken in opposition to the expressed will of the Native Hawaiian people and that such opposition was known in Congress, may not give rise to a legal right, but could give rise to a moral duty on the part of the United States to provide reparations or restitution.

TRUST RELATIONSHIP BETWEEN NATIVE HAWAIIANS AND THE UNITED STATES

A fiduciary relationship between the Federal Government and native group can arise from provisions of a treaty, statute or agreement with the group, from acts which grant benefits to a native group, and from the entire course of dealings between the United States and a Native American group.29/ Native Hawaiians seek to impose a fiduciary responsibility on the United States on two primary bases:

1) The actions of Minister Stevens at the time of the overthrow, the landing of American troops in Hawaii and American military support of the Provisional Government;

2) The transfer of native lands to federal government ownership at the time of annexation.

They also point to several federal statutes giving special benefits to Native Hawaiians as an implicit recognition of trust responsibilities. Thus, it is argued, that while the United States has never explicitly recognized a trust relationship to Native Hawaiians, the course of dealings between the federal government and Native Hawaiians may imply such a relationship.

The federal government has long recognized Native Hawaiians as a distinct aboriginal group and has dealt with them in a manner similar to other native American groups. Traditionally, certain criteria have been considered in determining whether a group of Indians is a "tribe" entitled to federal protection and services. These criteria include treaty relations with the United States, Congressional acts or executive orders denominating the group a tribe, collective rights in tribal lands or funds, recognition by other Indian tribes, and political authority over members exercised through a tribal council or other governmental form.30/ Other factors which have been considered are the existence of special appropriation items for the group, the social solidarity of the group, and ethnological and historical considerations.

Native Hawaiians meet many of the criteria which entitle an indigenous group to federal protection and services. They are clearly an identifiable aboriginal people with a distinct land-based culture. They have had treaty relations with the United States, Congress has legislated for their benefit and they have a collective right in traditional native lands and the income from those lands. Although Native Hawaiians do not have a governmental entity which exercises sovereign powers to the same extent as other native American groups, the historical reasons for lack of such self-governing powers may provide a more compelling argument for the trust relationship.

Congress has afforded Hawaiians some recognition as an aboriginal group. From an early period, the United States negotiated treaties with the Hawaiian Kingdom calling for peace and friendship and providing reciprocal trade rights. These treaties recognized the independence and sovereignty of the native government.

In 1893, President Cleveland acknowledged the role the United States Minister and American troops played in bringing about the overthrow of the native government and establishment of the Provisional Government and recommended restoration of the native government. Although no action was taken, Queen Liliuokalani continued to represent her people and continually sought redress from Congress.31/ On numerous occasions, legislation was introduced into Congress to redress that wrong. Finally, three years after the Queen's death, at the urging of Prince Jonah Kuhio Kalanianaole, Congress adopted the Hawaiian Homes Commission Act.32/ Under the Act, Congress recognized its trust obligations to Native Hawaiians and placed in trust, for the benefit of those with 50% or more aboriginal blood, over 200,000 acres of land to be used for the development of homes, ranches, and farms. The lands placed in trust under the Hawaiian Homes Commission Act were part of the more than 1.75 million acres of Government and Crown Lands ceded to the United States by the Republic of Hawaii at the time of annexation. As with other native groups recognized by

Congress, a portion of the aboriginal lands acquired by the United States was specifically set aside in trust for the protection and rehabilitation of the people whose lands were taken.

When the Hawaiian Homes Commission Act was being considered, one of the issues raised was whether Congress had the power to legislate for the benefit of native Hawaiians. At that time the Solicitor for the Department of the Interior gave an opinion upholding the Congressional power to enact legislation for native Hawaiians, analogizing it to the power to legislate for the benefit of Indians. Congress' determination that Hawaiian natives should be treated as other aboriginal groups also is reflected in House Committee on Territories Report:

> In the opinion of your committee there is no constitutional difficulty whatever involved in setting aside and developing lands of the Territory for native Hawaiians only . . . [T]he legislation is based upon a reasonable and not an arbitrary classification and is thus not unconstitutional class legislation. Further there are numerous congressional precedents for such legislation in previous enactments granting Indians . . . special privileges in obtaining and using the public lands. 33/

Since the adoption of the Hawaiian Homes Commission Act, Congress has continued to acknowledge trust obligations to Native Hawaiians. In the 1959 Admission Act, Congress reinforced the federal government's responsibility to Native Hawaiians by requiring the State of Hawaii to adopt the Hawaiian Homes Commission Act as part of its constitution.34/ Significantly, the federal government still retains certain responsibilities for enforcement of the Act. Land exchanges must be approved by the Secretary of the Interior and the Act itself cannot be amended without Congressional action, unless the amendments deal solely with administrative matters or increase benefits to Native Hawaiians.35/ Moreover, the federal government has acknowledged its fiduciary obligations to Native Hawaiians in an *amicus curiae* brief filed in *Keaukaha-Panaewa Community Ass'n. v. Hawaiian Homes*

Commission, a ninth circuit court of appeals case involving alleged violations of the Hawaiian Homes Commission Act.36/ (The Hawaiian Homes Act and trust are examined in Chapters 8 and 9.)

The State Admission Act also recognized Native Hawaiians in section 5(f) by designating "the betterment of conditions of Native Hawaiians" as one of the five trust purposes for which proceeds and income from ceded lands could be used. Ceded lands are those Government and Crown lands ceded to the United States at the time of annexation and later returned to the State. The State's role, as set out in the Admission Act, mirrors that assumed by the federal government at annexation. By the terms of the Joint Resolution of Annexation and the Organic Act, the federal government became the proprietor-trustee of ceded lands and required the Territory to manage the lands and use the income generated for the benefit of Hawaii's people.37/ Recognizing its obligation to Native Hawaiians in transferring ceded lands back to the State, the federal government singled out Native Hawaiians from the general public as special beneficiaries of the ceded land trust. Furthermore, the Admission Act provides that failure to use the lands and funds as specified "shall constitute a breach of trust, for which suit may be brought by the United States."38/ (The Ceded Lands Trust is reviewed in Chapter 5.)

Other indications that Congress has undertaken fiduciary responsibilities towards Native Hawaiians can be found in recently enacted legislation. For instance, in 1974 Congress made Hawaiians eligible for participation in the programs of the Administration for Native Americans. In 1978, Congress amended the Comprehensive Employment and Training Act to include Hawaiians in the Indian Manpower Program administered by the Director of Indian and Native American Programs of the Department of Labor. In the same year, the 95th Congress adopted the American Indian Religious Freedom Act and included Hawaiian natives in its coverage. Even the Native Hawaiian Study Commission Act can be viewed as a recognition of certain obligations to Native Americans.

Like many native American groups, Native Hawaiians have sought reparations and restitution for actions of the United States. In limited ways, the United States appears to have undertaken some trust obligation to Hawaii's native people and their lands. Congress has not taken the final step in giving formal legal recognition to moral and ethical claims of Native Hawaiians; however, Congress appears to have implicitly undertaken trust responsibilities to Native Hawaiians. Clearly acknowledging a trust relationship to Native Hawaiians would impose a duty of care commensurate with the strong historical and equitable claims of Native Hawaiians.

LOSS OF COLLECTIVE RIGHTS IN COMMON LANDS

Like many native people, Native Hawaiians had collective rights in certain lands. Under the American legal system, these collective rights have been recognized under the doctrine of aboriginal title. Aboriginal title is generally defined as title derived from the use and occupancy of land from time immemorial. The concept of aboriginal title as originally formulated by English and American law held that discovery of North America by Europeans transferred the right of ownership of the land to the discovering nations.39/ By right of discovery, the European sovereign gained good title against all other European sovereigns.

In most instances, the federal government has extinquished aboriginal title by purchase in agreements or treaties. Typically, an Indian tribe would cede a large tract of land to the United States and retain a smaller parcel, their rights to which the United States would then recognize and agree to protect. However, aboriginal title can be extinguished by force or conquest.40/

Since aboriginal title can be extinquished by force, the present view is that tribes need not be compensated for the extinquishment of such title. Thus, the cases have consistently held that aboriginal title is not protected by the fifth amendment taking clause. While Congress can provide, and often has provided, compensation for the extinquishment of aboriginal title, it is not constitutionally compelled to do so.41/

A number of specific tests to establish aboriginal title have been developed in the decisions of the

Indian Claims Commission: the group must be "a single landowning entity"; there must have been actual and exclusive use and occupancy of the lands; the use and occupancy must have been of a defined area; and the land must have been used and occupied for a long time before aboriginal title was extinguished.[42] Of course, in order to get compensation from the United States for loss of aboriginal title, the title must have been extinguished by the government of the United States. This section will examine each of these factors to determine whether the collective rights Native Hawaiians had in Government and Crown Lands are similar to aboriginal title rights asserted by other native groups. Title claims of other Native Americans may provide a precedent for reparations and restitution for Native Hawaiians.

The first test of aboriginal title is that the native group constituted a "single landowning entity" at the time they held aboriginal title.[43] The "single landowning entity" requirement can be met by demonstrating that the native group was a politically cohesive unit or, in the absence of political cohesiveness, that the group had a common culture, common language, ties of kinship, economic ties, and collective rights and common use in the area claimed.[44]

Native Hawaiians appear to have constituted a "single-landowning entity" prior to 1893. Before unification of the Hawaiian Islands in 1819, it is obvious that Native Hawaiians were a group with a common culture, language, kinship, and economic ties. Moreover, under the ancient land tenure system, no concept similar to fee simple ownership existed. Neither the king, the chiefs, nor the people "owned" the land in the Western sense. Instead, the land was viewed as belonging to the gods, although each strata of Hawaiian society had certain use rights in the land. The ali'i or chiefs managed the land while the people worked the land for the common good.[45]

After the islands were united, Native Hawaiians formed a politically cohesive unit under the rule of Kamehameha I. Island governors were appointed, basic laws were declared. In 1840, the first constitution was passed, declaring that all of the land of the kingdom had belonged to Kamehameha I, but "it was not his own private property. It belonged to the chiefs and people in common, of whom Kamehameha I was the head, and had the management of the landed property." 46/ This statement appears to embody the common use and ownership concept of the ancient land tenure system. Thus, prior to the Mahele of 1848, Native Hawaiians appear to have practiced a type of communal "ownership" of all the land of Hawaii.

In 1848 the Great Mahele, or division of land, "finally and conclusively established the principle of private allodial titles."47/ The intended goal of the Land Commission Board and of the Mahele was to be a total partition of individual interests, including a division and separation of the interests of the common people.

An important aspect of the Great Mahele was Kamehameha III's action setting "apart forever to the chiefs and the people of my kingdom" approximately 1.5 million acres of land. At the same time, he retained for himself, his heirs and successors approximately 1 million acres. The former lands were known as Government Lands and the latter as Crown Lands.

In designating certain lands for the chiefs and people, Kamehameha III continued and confirmed the collective ownership of these lands by the Native Hawaiian people. He did not extinguish the aboriginal interest in Government Lands but strengthened that interest. By the Act of June 7, 1848, a grateful legislature accepted the Government Lands conveyed by Kamehameha III.48/ In accepting the lands, the legislature affirmed the peoples' collective rights in the lands and specifically recognized the traditional use rights of native tenants. From 1848 to 1893, the Government Lands were administered by the Minister of the Interior for the benefit of the Hawaiian native government and any sales of such lands were subject to approval by the King in Privy Council. Consequently, it could be argued that all Government Lands as of 1893 were still impressed with aboriginal or native title.

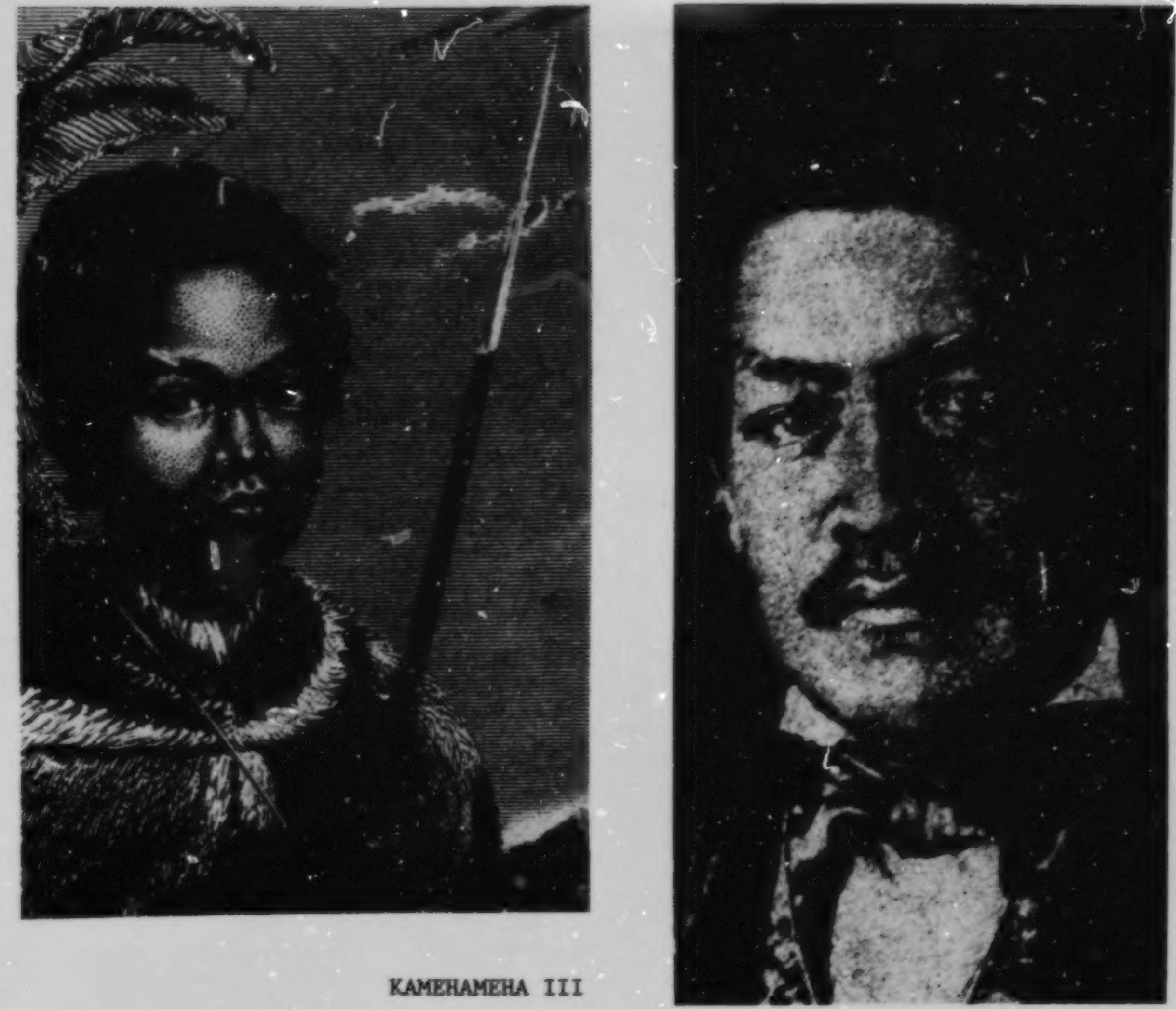
When Kamehameha III set apart the Government Lands, he also signed and sealed an instrument creating the King's Lands.49/ Until 1864, these lands were dealt with by the various monarchs as private property. In 1864, the Hawaii Supreme Court denied the claim of Queen Emma, widow of Kamehameha IV, to an intestate share of the lands, holding that the King's Lands descended in fee, although the inheritance of those lands was limited to successors to the throne and could be treated as private property.50/ The Act of January 3, 1865, confirmed the court's opinion in part but also provided that the lands should be "inalienable . . . [to] descend to the heirs and successors of the Hawaiian crown forever."51/ The Act also designated the lands as Crown Lands to indicate that they belonged to the king as sovereign and not as an individual.

In the years from 1865 to 1893, the Crown Lands continued to provide income to the reigning monarchs. The hereditary monarchy ended upon the death of Kamehameha V without a successor to the throne. William Lunalilo and then David Kalakaua were elected to the throne and the Crown Lands supported their reign as well as the brief reign of Liliuokalani. The Crown Lands, after the Act of January 3, 1865, were not the personal property of the monarch. When Liliuokalani sought compensation from the United States for the taking of the Crown Lands, the Court of Claims held that the reservation of lands was

> made to the Crown and not the King as an individual. The crown lands were the resourceful method of income to sustain, in part at least, the dignity of the office to which they were unseparably attached. When the office ceased to exist they became as other lands of the sovereignty and passed . . . as part and parcel of the public domain.52/

The Crown Lands were a domain which benefited "the dignity" of the native monarchs and were a unique symbol of the Hawaiian government and native people. The interest Native Hawaiians held in these lands could be considered analogous to an aboriginal title interest.

The Kuleana Act (and other legislation passed subsequent to the Great Mahele) allowed individual Native Hawaiians to claim a fee simple interest in lands they had actually cultivated or, in the case of other Native Hawaiians, to obtain fee simple title to Government Lands by purchase.53/ Land, including Government and Crown lands, was made available for



KAMEHAMEHA III

The enormity of the changes affecting the Kingdom of Hawai'i in the 19th century can be glimpsed in these two pictures of King Kamehameha III as a boy and as king.

Raised in the traditions of Hawaiian ali'i, the great tragedy of his life was the love he had for his sister. Missionary objections separated them.

In 1848, he divided the lands in fee simple title. This Great Mahele resulted in significant portions of the lands being held by non-Hawaiians. Six years later, Kamehameha III initiated secret negotiations with the United States for annexation of the Islands. He died before the treaties could be ratified.

purchase by foreigners.54/ Those lands which went into the private hands were no longer held in common by Native Hawaiians, but were owned in fee simple and resulted in vested property rights. Native Hawaiians are not asserting aboriginal interest claims to the lands which passed into the fee ownership system, although all lands in Hawaii appear to be subject to native rights.

In summary, Native Hawaiians appear to meet the first requirement of aboriginal title, they constituted a single landowning entity. Prior to 1819, they had common cultural, language, economic, and kinship ties, and collective rights in the land. After 1819, the Hawaiian Kingdom, a politically cohesive unit composed of and accepted by Native Hawaiians, was the "single landowning entity" which held title to Government and Crown lands.

The second and third tests for aboriginal title are that the single landowning entity had actual and exclusive use and occupancy of the specified lands for a long period of time before title was extinguished. For centuries prior to Western contact, Native Hawaiians used and occupied the lands of Hawaii and exercised collective rights in the land. After Western contact, and after the Mahele, much land was converted to individual fee-simple ownership. However, the Government and Crown Lands were maintained as lands held by the Hawaiian Kingdom for the chiefs and people in common. One indication of collective rights in these lands was the specific recognition of traditional native rights of gathering and access on Government and Crown Lands. Further, the exact boundaries of these lands can be ascertained by referring to the original Mahele Book and documents, as well as subsequent transactions involving Government and Crown Lands. (Note that pasturage or grazing rights were not included. Pre-contact Hawai'i had no herd animals.)

The next question to be considered is whether the United States extinguished the title interest which Native Hawaiians may have had in the Government and Crown Lands. In 1898 the Republic of Hawaii ceded approximately 1.75 million acres of aboriginal land to the United States. It has been argued that the Republic of Hawaii would not have been able to cede these lands to the United States but for the actions of agents of the United States and the use of American troops five years earlier. An obvious weakness in this argument is the 5 year span in which the Republic of Hawaii controlled Government and Crown Lands. This break in possession may have divested Native Hawaiians of their interest in those lands.

Two theories developed in Indian cases may provide some precedent for finding otherwise. The first is the doctrine of voluntary abandonment.55/ Under Indian law principles, forcible dispossession by non-natives, as in the case of Native Hawaiians, does not extinguish aboriginal title. Theoretically, only voluntary abandonment of native lands would divest Native Hawaiians of aboriginal title. Thus, it could be argued that Native Hawaiians continued to hold aboriginal title to Crown and Government Lands until such title was extinguished in 1898 by the Joint Resolution of Annexation.

Under the second theory, even if Native Hawaiians were deprived of aboriginal title in 1893 by the establishment of a Provisional Government and later the Republic of Hawaii, the United States may still be liable. Under applicable principles of Indian law, the United States has been held responsible for actions of third parties depriving aboriginal people of their land rights, if the United States aided in or sanctioned the actions of those third parties.56/ An argument could be fashioned to show that such was the case in Hawaii where the United States gave support and military protection to the Provisional Government. The Republic of Hawaii expropriated the Government and Crown Lands without compensation to the native people. The United States, by succeeding to the title of these lands, extinguished the aboriginal title of the Hawaiian people. Moreover, the interests of the native people were implicitly acknowledged by the provisions of the Joint Resolution of Annexation and the Organic Act reserving the revenue and proceeds from Crown and Government Lands "for the inhabitants of the Hawaiian Islands." The United States held these lands and had free use of them for sixty years, during which time the native people were substantially deprived of their use and enjoyment.

While there is no constitutional provision which would compel compensation for the loss of whatever title interest Native Hawaiians possessed in the

Government and Crown Lands, Congress has previously provided either a judicial forum for compensation or directly acted to compensate for loss of aboriginal title. There is ample legal and equitable precedent for such action in special jurisdictional acts giving Indian tribes the right to bring their aboriginal title claims into court, the Indian Claims Commission Act, and the Alaska Native Claims Settlement Act.

RECOGNITION BY THE UNITED STATES OF NATIVE HAWAIIAN INTEREST IN COMMON LANDS

A second legal principle under which the United States has provided reparations or restitution for loss of land is where the United States has "recognized"--acknowledged by its laws--the title of the native group to the land. "Recognized" title, in federal Indian law, occurs when Congress has granted an Indian tribe the "right to occupy and use" certain lands permanently.57/ If the United States takes lands where title has been recognized in a native group, the Fifth Amendment requires the United States to compensate the native group.

In this instance, Native Hawaiians do not appear to be claiming recognized title under the legal doctrine developed in Indian Law. Rather, Native Hawaiians argue that their rights in Crown and Government Lands were not only aboriginal but were formal and acknowledged by the United States. Kamehameha III's action in setting aside approximately 1.5 million acres of Government Lands to "the chiefs and the people of my kingdom," and reserving another 1 million acres as Crown Land indicate that the title held by Native Hawaiians was a vested title. The approval of Kamehameha III's actions by the Hawaiian Legislature in the Act of June 7, 1848, emphasizes the point that that title was a formal title, granted in accordance with Hawaiian law. Furthermore, that title was implicitly acknowledged by the United States in numerous treaties and agreements.

In 1826 the first formal agreement between the United States and the Hawaiian Kingdom was negotiated. Although that treaty was never ratified by the United States Senate it was

> . . . clearly an international act, signed as such by the authorities of the then independent Hawaiian government, and by a representative of the United States, whose instructions, while vague, must be regarded as sufficient authority for his signature, in view of the then remoteness of the region from the seat of government and the general discretion which those instructions granted.58/

In 1849, Congress did ratify a formal treaty between the United States and the Kingdom of Hawaii dealing with friendship, commerce, and navigation. Article One provided for the "perpetual peace and amity between the United states and the King of the Hawaiian Islands, his heirs and successors."59/ The initial life-span of this Friendship Treaty was 10 years. After the initial ten years, each party had the right to terminate the treaty after a year's notice. This treaty was still in effect at the time the Hawaiian monarchy was overthrown in 1893. In 1875, another treaty between the United States and Hawaii was signed providing duty-free entry of certain American goods and products into Hawaii and vice versa.60/ In 1887, this Reciprocity Treaty was amended to give the United States the exclusive right to enter and use Pearl Harbor as a coaling and repair station.61/ Obviously, in gaining the use of Hawaiian lands, the United States must have recognized that the title of those lands rested in the Hawaiian government.

While these treaties are clearly very different from those negotiated with Indian tribes, they indicate that the United States recognized and acknowledged the existing government of Hawaii and the rights of that government to the territory then within its domain. In some senses, then, this amounted to a recognition of title in the Hawaiian native government.

In the past, the United States has respected property rights of native people which were recognized under prior governments. Congress and the courts have long respected grants to native people under the laws of another sovereign.62/ This policy is based on international law precepts. The most important examples of native groups that have claims traceable in part to the laws of other sovereigns are the Pueblo and

California Indians, whose claims rested on Spanish and Mexican law, and the Alaska Natives, claiming in part under Russian law.63/ In each case, Congress acted to establish a procedure to determine and confirm title.

It is highly unlikely that the United States could be held liable for a "taking" of Government and Crown Lands under the Fifth Amendment. It is argued however, that annexation itself was analogous to a "taking" because in that process the Crown and Government lands were appropriated for use by the federal government pursuant to a Congressional authorization. Moreover, although the 1900 Organic Act provided that the lands ceded to the United States under the Joint Resolution of Annexation would remain in the possession, use and control of the Territory of Hawaii, those lands were transferred to the United States in fee and only through Congressional authority could those lands be disposed of.

It is clear that Native Hawaiians did not have "recognized title" in the same sense as Indian tribes. However, the title of the native government was a formal, valid title. As with other theories advanced by Native Hawaiians, there is no constitutional provision compelling reparations or restitution for loss of this type of interest.

PART II

THE NATIVE HAWAIIAN TRUST

CHAPTER 5 The Ceded Lands Trust

A. Annexation

In the United States, the 1893 debates over annexation had focused on historical, constitutional, and moral issues. From an historical perspective, the primary argument against annexation was that acquisition of Hawaii ran contrary to the foreign policy guidelines and precedents established by the founding fathers.1/ Second, it was argued that annexation would be inconsistent with the United States' fifty-year-old policy of recognizing and maintaining Hawaii's independence.2/ This second argument derived from the "Tyler Doctrine" announced by Secretary of State Daniel Webster in 1842, aimed at maintaining an independent Hawaii.3/

Two constitutional arguments were also raised by well-known constitutional scholars. George T. Curtis, the plaintiff's attorney in the Dred Scott case, claimed that two conditions had to be met before territory could be incorporated into the Union through the treaty-making power.4/ First, the territory had to be contiguous or at least situated on the North American continent. Second, there had to be "a controlling public necessity for its acquisition." Thomas M. Cooley, professor of American history and constitutional law at the University of Michigan, argued that the provisional government was empowered to represent the Hawaiian people only temporarily until a permanent and legitimate government was established. Since the natives had not been consulted by the temporary government, there was no indication that most of them supported annexation. Cooley argued that legitimacy and consent were constitutional problems that had to be resolved before a valid offer of cession could be made on behalf of Hawaii's people.5/ Cooley's argument was closely related to the moral argument popular in the mainland press: The United States, in annexing Hawaii, would be receiving territory which the provisional government had no right to cede. Since the natives supported neither the government nor its aims, annexation would be tantamount to acceptance of "stolen goods".6/

Racial arguments were also advanced in the press and in Congress. These arguments ranged all the way from diatribes against the inferiority of Hawaii's indigenous and Asiatic people to genuine concern for the self-governing rights of native Hawaiians.7/ One of the leaders of the anti-annexation movement in the Senate stated:

> There is a native population in the islands of about 40,000. They are not illiterate; they are not ignorant. A very large majority can read and write both languages, English and Hawaiian, and they take a very lively and intelligent interest in the affairs of their own country. This is an element which on the proposition of annexation is to be consulted prior to any other; it must accompany any treaty; and any treaty which had been made without consulting this element was properly withdrawn and ought never to have been sanctioned.8/

By 1896, however, Cleveland had been replaced by McKinley, whose campaign platform had advocated a Hawaii "controlled" by the United States. On June 16, 1897 a new treaty of annexation was signed by the Hawaiian annexation commissioners and Assistant Secretary of State Day. In Hawaii, island annexationists were delighted by news of the treaty. President Dole was advised to call a special session of the senate to ratify the document. On September 7th, the U.S. Minister to Hawaii, H. M. Sewall, as well as Dole and his cabinet, were handed a set of resolutions in Hawaiian which had been adopted at a mass meeting the day before. The resolutions represented the views of native Hawaiians and made two points: first, that the natives were largely against annexation and second, that they wanted independence under a monarchy.9/ Ironically, at the same time the resolutions were being presented, the Republic's senate was ratifying the annexation treaty.

The treaty was not so readily welcomed in the

United States Senate. A vigorous campaign against annexation was mounted by mainland sugar interests fearful of importation of Hawaiian sugar, by organized labor opposing the contract labor system in the islands, and by anti-expansionist forces. 10/ The arguments of the anti-expansionists were basically the same as those advanced in 1893 - historical, constitutional, moral, and racial. Perhaps the strongest argument raised against the McKinley treaty was that the United States should adhere to her republican tradition and forego a policy of imperialism.11/

Once again the opponents of annexation exhibited a wide range of attitudes concerning the racial make-up of the islands' population. In spite of the spectrum of opinion on the suitability of Hawaii's indigenous people for American citizenship "the critics of empire were nearly unanimous in their belief that no transfer of sovereignty should take place without the consent of the natives of Hawaii."12/

The McKinley treaty was defeated. One historian has suggested that the primary reason the treaty failed was "the notion that Hawaii's admission would mark an abandonment of America's time-tested anti-colonial tradition and would embark the Republic upon the perilous course of empire."13/

During the spring of 1898 the Spanish-American war, the prospect for increased trade in Far East, and ominous developments in China, where the European powers were scrambling for spheres of influence, combined to revive the annexation move in Congress. After Perry's victory in Manila on May 1st, many annexationists insisted that the United States had to annex Hawaii in order to send supplies and reinforcements to American forces in the Phillipines. Pearl Harbor, whose military importance had long been recognized, became a primary objective of annexation. Although America had rights to a base at Pearl Harbor, those rights derived from a treaty that could be abrogated. Annexationists argued that it was necessary for the United States to have the permanent rights to Pearl Harbor which only annexation could provide.
14/ On May 4th a joint resolution of annexation was introduced in the House by Francis G. Newlands of Nevada.

In 1893 the constitutionality of annexing the islands by treaty had been questioned. Now, the arguments focused on the constitutionality of accomplishing the same goal by way of joint resolution. The primary argument against the resolution was that only under the constitutional treaty-making power could the United States gain territory. To acquire Hawaii by a legislative act, a joint resolution, would usurp the power of the senate and executive to act in matters relating to acquisition of new territories and set a dangerous precedent.15/ Although annexationists pointed to the acquisition of Texas in 1845 by joint resolution as precedent, most anti-annexationists believed that Texas had been brought into the Union legally under Congress' power to admit new states. Since statehood was not proposed for Hawaii, the Texas acquisition had no precedential value. Further, the joint resolution utilized in the Texas case was approved by a plebiscite held in Texas. No plebiscite was proposed for Hawaii. One Senator offered an amendment to the Newlands measure providing for such a vote by all adult males, but it was defeated.16/

Finally, on June 15, by a vote of 209 to 91, the House approved the Newlands resolution.17/ On July 6, the Newlands measure passed the senate by 42 to 21, with 26 abstentions.18/ The next day, President McKinley signed the annexation resolution.

On August 12, 1898, the Republic of Hawaii ceded sovereignty of the islands to the United States under the terms of the Joint Resolution of Annexation.19/ With cession of sovereignty, the Republic also conveyed absolute title of Hawaii's public lands to the United States. These lands, formerly the Government and Crown lands under the monarchy, amounted to over 1,750,000 acres valued at 5.5 million dollars.20/ The Joint Resolution, while ceding absolute title to the public lands, declared that:

> the existing land laws of the United States relative to public lands shall not apply to such land in the Hawaiian Islands, but the Congress of the United States shall enact special laws for their management and disposition: Provided, That all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for

> the civil, military, or naval purposes of the United States, or may be assigned for the use of the local government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.21/ (emphasis added)

The Joint Resolution set up an interim government for the islands, and provided that municipal legislation of the Republic not inconsistent with federal laws, treaties, or the federal constitution should remain in effect until Congress could provide for a territorial government.22/ A five member commission was established to draft and recommend an Organic Act to govern the new territory.23/

B. Territory

In 1900, Congress following its own mandate in the Joint Resolution to enact additional legislation, passed an Organic Act establishing Hawaii's territorial government, confirming the cession of public lands to the United States, and providing specific laws for the administration of those lands.24/ Section 91 of the Organic Act, one of two sections dealing directly with lands, stated in relevant part:

> [E]xcept as otherwise provided, the public property ceded and transferred to the United States by the Republic of Hawaii under the joint resolution of annexation . . . shall be and remain in the possession, use, and control of the government of the Territory of Hawaii, and shall be maintained, managed, and cared for by it, at its own expense, until otherwise provided for by Congress, or taken for the uses and purposes of the United States by direction of the President or of the Governor of Hawaii.25/

Another section of the Organic Act provided that the proceeds from the Territory's sale, lease, or other disposition of these ceded lands should be deposited in the Territory's treasury for "such uses and purposes for the benefit of the inhabitants of the Territory of

Hawaii as are consistent with the joint resolution of annexation."26/

Although the Republic had ceded absolute title of Hawaii's public lands to the United States, both the Joint Resolution of Annexation and Hawaii's Organic Act recognized that these lands were impressed with a special trust under the federal government's proprietorship. In fact, it has been argued that Hawaii's ceded lands never became an integral part of the federal public domain; rather, due to their unique status the United States received legal title to the land, but the beneficial title rested with the inhabitants of Hawaii:

> The territorial government had in effect become a conduit of Congress. For all practical purposes the ceded lands had not changed hands. Building on Hawaii's existing land administration scheme, Congress prescribed several significant changes in the Organic Act to insure widespread use of public lands for settlement and homesteading. Otherwise, the territory was given direct control over the public lands and was authorized to dispose of them as a governmental entity . . . The federal government continued to hold absolute title to the public domain, but did so only 'in trust' for the islands' people.27/

Nevertheless, the federal government also reserved the right to withdraw lands for its own use.

The Organic Act established a territorial government structurally similar to that of most states in the Union. The differences arose from the ultimate authority possessed by the federal government. Congress, having erected the territorial government, could abolish it and substitute some other government form. The principal officers of the territory, the governor and secretary, were appointed by the President with the consent of the senate.28/ The secretary became acting governor in event of the disability of the governor. Heads of the various territorial departments were appointed by the governor.29/ Territorial supreme court, circuit court, and federal district court judges were appointed by the President, while district magistrates were appointed by the chief justice of the territorial supreme court.30/ A bi-cameral legislature was set-up with universal suffrage for anyone who had held citizen status under the Republic. Although the legislature could pass laws on substantially the same range of subjects as do state legislatures, Congress had the right to amend or invalidate any territorial law.31/ Hawaii was also given a non-voting delegate to Congress.32/

C. Federal Government Use of Hawaii's Lands

Soon after the Joint Resolution of Annexation was signed, questions arose as to the ability of the Hawaiian government to continue its land policies - particularly its land leasing program. Sanford Dole, appointed as temporary governor of Hawaii by McKinley, assumed that the land laws of the Republic were to continue in force. His view was reinforced by American officials in Hawaii and the U.S. Department of State. 33/ However some American military officers believed that it was against the United States' best interests to have the public land laws administered by Hawaii's government. This view was based on the recognition that considerable amounts of Hawaii's public lands would be needed for military installations and the fear that those lands might be leased or sold by the Hawaiian government.34/

In 1899, Col. Compton made an assessment of lands required for military purposes in Hawaii and reported that a significant portion of the land he deemed indispensable for military installations had already been placed under leases that were not scheduled to expire until the 1920s.35/ Both the Chief of the Army's legal staff and the U.S. Attorney General, alerted by Compton's report, concluded that the Joint Resolution of Annexation did not authorize the disposition of Hawaii's public lands by the Hawaiian government since Congress had the sole power to dispose of land and property of the United States under the Constitution.36/ President McKinley took immediate action based on the Attorney General's advice and issued an Executive Order on September 28, 1899 suspend ing all public land transactions in Hawaii after that date.37/

Compton had recommended that two large tracts of land on Oahu, the sites of Schofield Barracks and Fort Shafter, be secured immediately. Portions of those tracts were under private lease and Compton urged that condemnation procedures be initiated to acquire the private leases. Compton's recommendations ultimately reached President McKinley who issued an executive order on July 20, 1899 setting aside for army use over 15,000 acres of land on Oahu.38/ Between November 2, 1898 and January 5, 1900, five such executive orders or presidential proclamations "setting aside" public land in Hawaii for use by the United States were issued.39/ An important precedent was established and the military has made extensive use of Hawaii's public lands ever since.

Undoubtedly, one of the major justifications for annexing Hawaii was national defense. Many annexationists had argued that Hawaii was needed to protect the West Coast of the United States and to maintain U.S. military strength in the Pacific.40/ No site in the Pacific area was better suited for refueling ships, storing munitions, and quartering troops than Pearl Harbor. Not surprisingly, such a strategically important base required all possible protection, and thus extensive tracts of land were set aside for the installation of shore batteries and the construction of forts and barracks.

The policy of using Hawaii's lands for military purposes continued, accelerating during the second World War. By the time Hawaii became a state in 1959, 287,078.44 acres of Hawaii's public lands had been set aside for federal government use.41/ 227,972.62 acres were located in national parks with the remainder being utilized by the Department of Defense.42/ In addition, the federal government had permits and licenses for an additional 117,412.74 acres of land.43/ Finally, the United States had acquired the fee interest, through purchase or condemnation, of 28,234.73 acres.44/

D. Statehood and the Admission Act

In 1959, Hawaii was admitted to the union as a state.45/ The special status of Hawaii's public lands was recognized and the intent to return those lands to Hawaii made clear in Hawaii's Admission Act. These lands, formerly the Crown and Government Lands, had

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been ceded to the United States at annexation. In an unprecedented action, the federal government relinquished title to most of the ceded lands held at the time of statehood.46/

Section 5 of the Admission Act provides the key to understanding Hawaii's ceded lands and the state's responsibilities in relation to those lands. Section 5(a) names the state as successor in title to lands and properties held by the territory.47/ Section 5(b) then declares that

> [e]xcept as provided in subsection (c) and (d) of this section, the United States grants to the State of Hawaii, effective upon its admission into the Union, the United States' title to all the public lands and other property, and to all lands defined as 'available lands' by section 203 of the Hawaiian Homes Commission Act, 1920, as amended, within the boundaries of the State of Hawaii, title to which is held by the United States immediately prior to its admission into the Union.48/

Section 5(g) of the Act defines public lands and other public property as the "lands and properties that were ceded to the United States by the Republic of Hawaii under the joint resolution of annexation . . . or that have been acquired in exchange for lands or properties so ceded."49/

Specifically excepted from the section 5(b) grant were ceded lands that had been set aside for federal use pursuant to an act of Congress, executive order, presidential proclamation, or gubernatorial proclamation.50/ Section 5(c) of the Admission Act provided that such lands should remain the property of the United States.

Section 5(d) of the Act dealt with other exempted lands. It allowed the federal government to set aside, within five years, any ceded lands it was using under permit, license, or permission of the territory immediately prior to statehood. Once set aside those lands would also remain the property of the United States.51/

Section 5(e) required each federal agency in Hawaii having control of land or property retained by the federal government under sections 5(c) or 5(d) to:

> report to the President the facts regarding its continued need for . . . such land and property and if the President determines that the land or property is no longer needed by the United States, it shall be conveyed freely to the State of Hawaii.52/

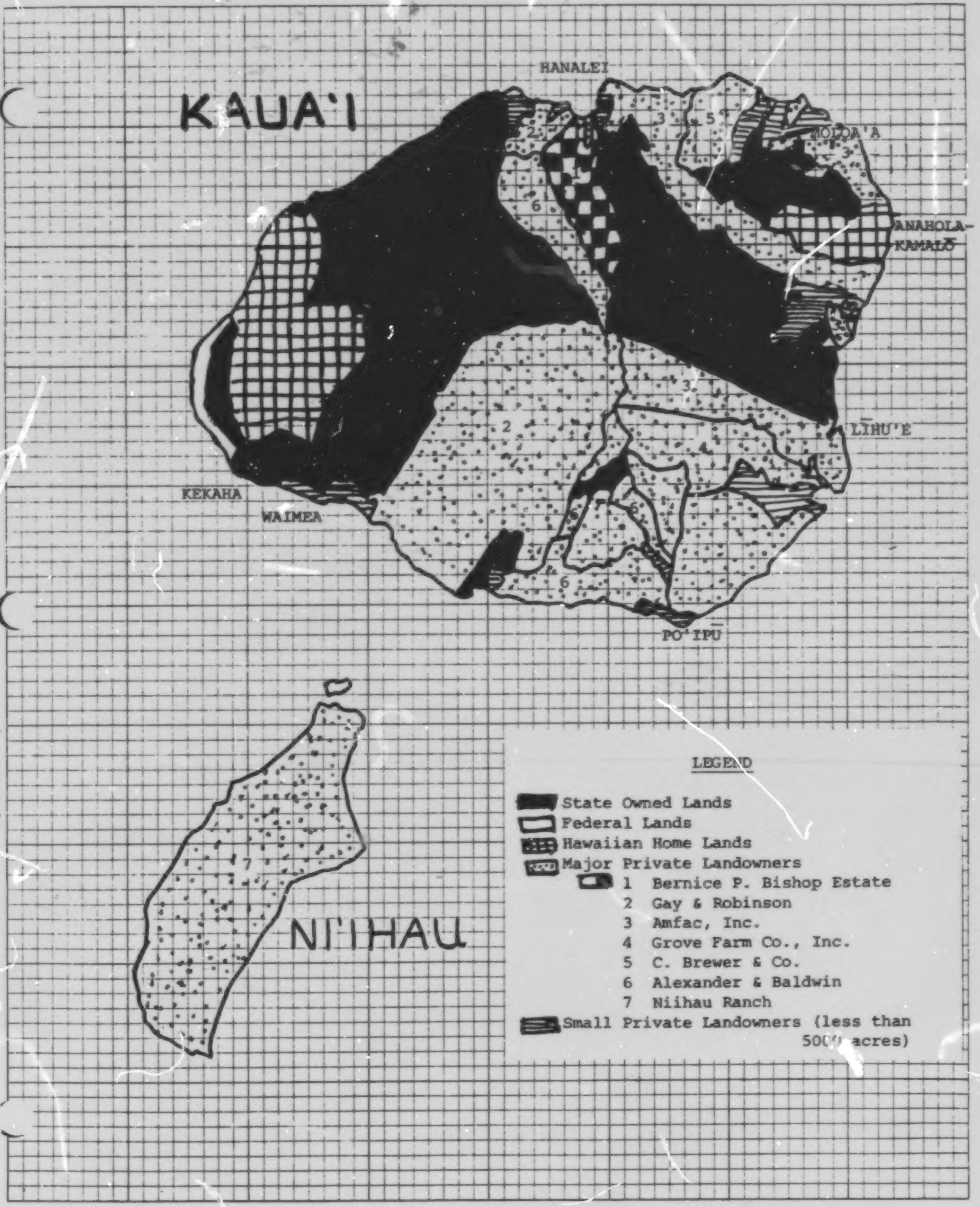
This provision, however, set a five-year deadline for reporting and conveying lands to the state. After August 21, 1964, five years from the date on which Hawaii formally entered the union, title to ceded lands retained by the federal government would vest permanently in the United States.

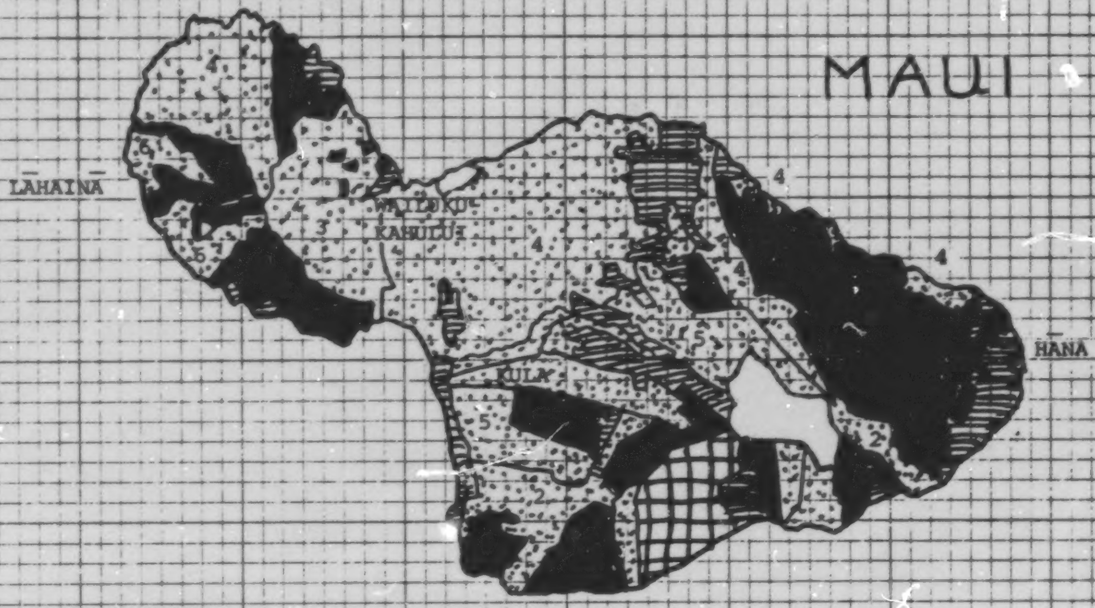
The final major subsection of section 5 set forth the states responsibilities in connection with ceded lands. Section 5(f) requires the state to hold all ceded lands returned under sections (b) and (e), together with the proceeds from their sale or other disposition and the income therefrom

> as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible, for the making of a public improvements, and for the provision of lands for public use. Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such manner as the constitution and laws of said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States.53/

1. Return of Federally Controlled Lands

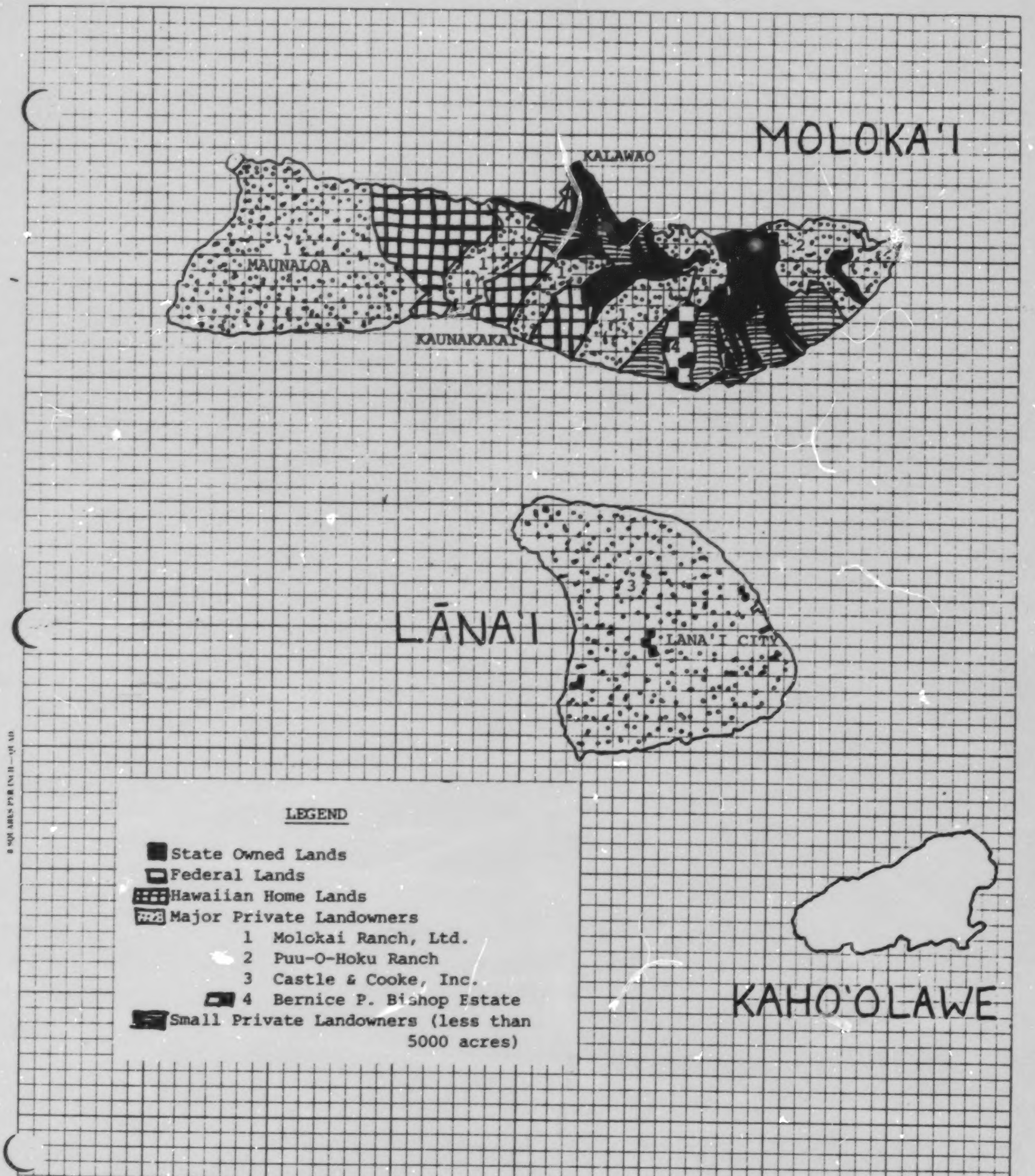
At the time of statehood, 287,078.44 acres of Hawaii's public lands had been set aside for the

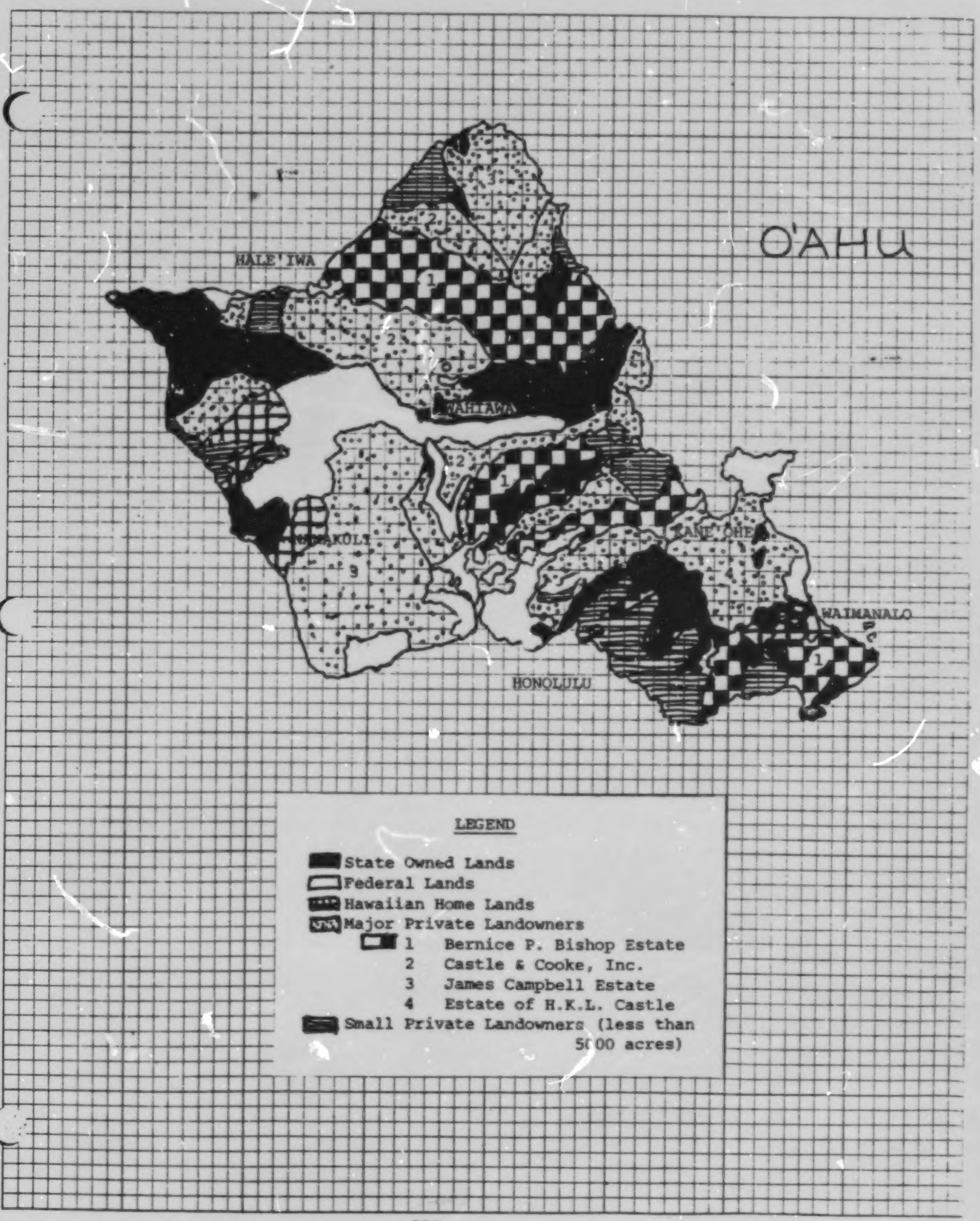

KAUA'I
HANALEI
MOLOA'A
ANAHOLA-
KAMALŌ
LĪHU'E
PO'IPŪ
KEKAHA
WAIMEA
NI'IHAU
2
3
5
6
4
7
LEGEND
State Owned Lands
Federal Lands
Hawaiian Home Lands
Major Private Landowners
1 Bernice P. Bishop Estate
2 Gay & Robinson
3 Amfac, Inc.
4 Grove Farm Co., Inc.
5 C. Brewer & Co.
6 Alexander & Baldwin
7 Niihau Ranch
Small Private Landowners (less than 5000 acres)

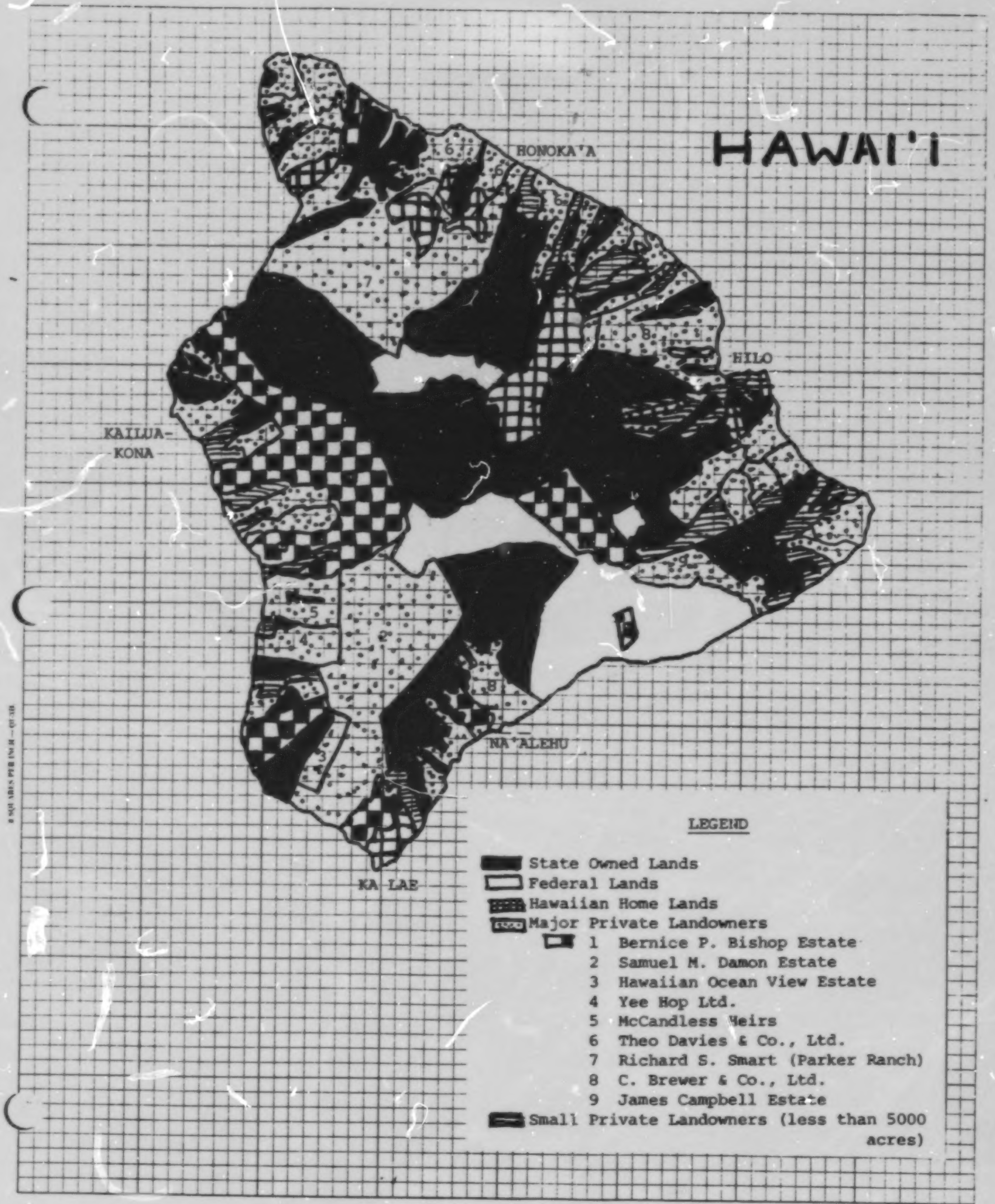

MAUI
LAHAINA
WAILUKU
KAHULUI
KULA
HANA
4
6
5
3
4
4
4
5
5
2
2

LEGEND

- ■ State Owned Lands
- □ Federal Lands
- ▩ Hawaiian Home Lands
- ▤ Major Private Landowners
  - ■ 1 Bernice P. Bishop Estate
  - 2 Ulupalakua Ranch, Inc.
  - 3 C. Brewer & Co., Ltd.
  - 4 Alexander & Baldwin, Inc.
  - 5 Haleakala Ranch Co.
  - 6 Amfac, Inc.
- ■ Small Private Landowners (less than 5000 acres)


MOLOKA'I
KALAWAO
MAUNALOA
KAUNAKAKAI
1
2
4
LĀNA'I
LANA'I CITY
3
KAHO'OLAWE
LEGEND
■ State Owned Lands
▭ Federal Lands
▦ Hawaiian Home Lands
▨ Major Private Landowners
1 Molokai Ranch, Ltd.
2 Puu-O-Hoku Ranch
3 Castle & Cooke, Inc.
4 Bernice P. Bishop Estate
■ Small Private Landowners (less than 5000 acres)


O'AHU
HALE'IWA
WAHIAWA
NANAKULI
KANE'OHE
WAIMANALO
HONOLULU
1
2
3
4
LEGEND
■ State Owned Lands
☐ Federal Lands
▨ Hawaiian Home Lands
▨ Major Private Landowners
1 Bernice P. Bishop Estate
2 Castle & Cooke, Inc.
3 James Campbell Estate
4 Estate of H.K.L. Castle
▤ Small Private Landowners (less than 5000 acres)


HAWAI'I
HONOKA'A
HILO
KAILUA-
KONA
NA'ALEHU
KA LAE
6
6
6
7
8
5
4
2
8
3
9
LEGEND
■ State Owned Lands
☐ Federal Lands
▦ Hawaiian Home Lands
▨ Major Private Landowners
■ 1 Bernice P. Bishop Estate
2 Samuel M. Damon Estate
3 Hawaiian Ocean View Estate
4 Yee Hop Ltd.
5 McCandless Heirs
6 Theo Davies & Co., Ltd.
7 Richard S. Smart (Parker Ranch)
8 C. Brewer & Co., Ltd.
9 James Campbell Estate
▤ Small Private Landowners (less than 5000 acres)

federal government. Although section 5(c) of the Admission Act allowed the federal government to retain set aside lands, section 5(e) established a mechanism for conveying some of those lands to the new state. State officials had high hopes for return of substantial portions of federally held lands, but as Section 5(e)'s five-year deadline approached, only 595.41 acres had been returned.54/

Furthermore, section 5(d) of the Admission Act allowed the federal government to set aside, within five years, lands it was using under lease, permit, or license immediately prior to statehood. Prior to statehood, the federal government had permits and licenses on 117,412.74 acres of land. Virtually all of these lands were retained under the federal government's control. 87,236.557 acres of land were set aside pursuant to section 5(d) while another 30,175.18 acres were leased to the federal government for 65 years at nominal cost.55/ A 1969 report on Hawaii's Public Lands described the situation as follows:

> Soon after statehood it became apparent that the Defense Department had no intention of immediately giving up control of any of this land; and that this would quite likely be the final position of the executive branch. Faced with this prospect, Hawaii's Democratic congressional delegation pressed hard for some concessions, but was largely unsuccessful. Serious action by the United States government was put off until the summer of 1964, when staff members from the Bureau of the Budget went to Honolulu to "negotiate" with Governor Burns regarding this land. The position of the government was uncomplicated. The bulk of the land, 87,236 acres, was definitely to be "set aside", while the remainder of the land was to be leased to the federal government for 65 years at the nominal charge of $1.00 for each lease. These leases were in fact offered as a kind of concession, for the alternative, as the federal negotiators made clear, would be the "setting aside" of this land as well. The State of Hawaii was clearly bargaining

> from a position of weakness, and was forced to agree to these terms.56/

Some of Hawaii's political leaders objected to the five year deadline set on the return of land that had been set aside for federal government use.57/ They contended that Hawaii had a unique claim on these lands and property since they were originally given to the United States by the Republic and were held as a kind of "trust" for the people of Hawaii. As a result, on December 23, 1963, Congress passed Public Law 88-233, a reconveyancing act, effectively amending section 5(e) of the Admission Act.58/ P. L. 88-233 abolished section 5(e)'s five-year deadline and extended, without limitation, the possibility of the federal government relinquishing title, without cost to the state, to section 5(c) and 5(d) ceded lands. However, all lands which had been set aside for national parks (approximately 227,972 acres) became the fee simple property of the federal government. Thus, under the provisions of P. L. 88-233 approximately 58,510 acres of land under the section 5(c) category and 87,236 acres under the section 5(d) category, totaling 145,746 acres, became eligible for return to the State of Hawaii at any time. Since 1964, however, less than 500 acres of land have been returned under the reconveyancing act's provisions.59/

2. State Responsibilities in Relation to Ceded Lands

Section 5(f) of the Admission Act requires the state to hold the ceded lands and their proceeds and income as a public trust for any one of five trust purposes:

(a) support of public schools and other public educational institutions;
(b) betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended;
(c) development of farm and home ownership on as widespread as basis as possible;
(d) making of public improvements; and
(e) provision of lands for public use.

Section 5(f) also provides that the use of the ceded lands, their proceeds and income for any purposes other than those enumerated "shall constitute a breach of trust for which suit may be brought by the United States.60/

Since statehood, the Department of Land and Natural Resources (DLNR) has been charged with the receipt and administration of the public land trust established by this section of the Admission Act.61/ However, a 1979 audit of the DLNR indicated that the trust has not been administered in conformance with the Admission Act.62/ The DLNR has failed to properly dispose of the revenue and income from the public land trust. Hawaii Revised Statutes, section 171-18, the implementing legislation for section 5(f) of the Admission Act, established a public land trust fund for the receipt of funds derived from the sale, lease, or other disposition of ceded lands.63/ Hawaii Revised Statutes section 171-19, created a separate fund, the special land and development fund, for all proceeds from the disposition of non-ceded lands (lands which the state may have acquired by condemnation, purchase or other means).64/ This second fund was established for the maintenance and development of all public lands. These two funds were intended to serve different purposes. Monies deposited in the public land trust fund were to come from the disposition of ceded lands and were to be expended in a manner consistent with the directions of section 5(f) of the Admissions Act. Monies deposited in the special land and development fund were to come from the disposition of non-ceded lands (lands not subject to the section 5(f) trust) and were to be expended to maintain and develop all public lands.

However, since statehood, DLNR has failed to make this distinction between the two funds and instead has deposited monies from the leases of all public lands into the public land trust fund and monies from the sale of all public lands into the special land and development fund.65/ Thus, in depositing money in the two funds, the distinction between ceded lands (lands subject to the section 5(f) trust) and non-ceded lands (lands not subject to the 5(f) trust) has been ignored; instead, monies have been deposited on the basis of a lease/sale dichotomy.

The reason given for the failure to conform to the mandate of §5(f) of the Admission Act is even more disturbing. No inventory of public lands exists and the DLNR has been unable to distinguish between ceded and non-ceded public lands.66/ A recent article on Hawaii's ceded lands observed that:

> In fact, between statehood and 1979, no attempt had been made by the Department to compile a comprehensive inventory of the state's public lands, much less one distinguishing between its ceded and non-ceded portions. Notwithstanding the difficulty of assembling such an inventory given the deficiencies in existing records, it is still curious, in light of the requirements of the section 5(f), that such an inventory does not exist at the present time.67/

That same article concluded that the absence of an inventory and the confusion of funds have impeded the administration of the section 5(f) public trust in several ways.68/ First, because the DLNR cannot use the ceded/non-ceded distinction in recording receipts, there is no way of knowing the accuracy of its figures for each fund or of determining which monies belong to which fund. Since most of the income from public lands is derived from ceded lands, this failure to distinguish ceded and non-ceded lands has probably worked to the disadvantage of the public land trust fund. Secondly, the wrongful deposits may have resulted in expenditures of public trust monies for the purposes of the special land and development fund and vice versa. However, it is impossible to know the extent to which the expenditures may have been wrongfully applied until a comprehensive inventory is completed. Likewise, until an inventory is completed, the total amount of monies available for section 5(f) trust purposes cannot be determined. Finally, because section 5(f) requires the state to hold ceded lands separately in trust, the state's failure to identify ceded lands, like a private trustee's failure to identify and segregate trust assets, constitutes an independent breach of its 5(f) obligations.

DEFINITIONS

"Act"	the Hawaiian Homes Commission Act of 1920 - passed by Congress
"Applicant"	a qualified native Hawaiian registered for a homestead award who is at least 21 years of age
"Available Lands"	lands designated by Congress as available for the Hawaiian Home Lands program
"Award"	a homestead lease given to a qualified applicant for a house or residential award, a farm award or a ranch award
"Buy-Back"	Commission pays appraised value for improvements on homestead lots in the case of cancellations or surrenders
"Commission" "HHC"	the Hawaiian Homes Commission, the body designated to execute the provisions of the Act
OR	
"Department" "DHHL"	the Department of Hawaiian Home Lands
"Director"	the Director of the Department who is also Chairman of the Commission
"Hawaiian Home Lands" "HHLS"	the "available" lands given the status of such by Congress

"Homesteader"	the holder of a 99-year lease award
"HRS"	Hawaii Revised Statutes
"Lessee"	has the same meaning as "homesteader"
"Native Hawaiian"	any descendant of not less than one half of the blood of the races inhabiting the Hawaiian Islands previous to 1778
"New Home"	a home for a new award to an applicant
"Organic Act"	Hawaiian Organic Act - an act to provide a government for the Territory of Hawaii, approved April 30, 1900
"Program"	the Hawaiian Home Lands program
"Replacement Home"	a homesteader's or lessee's home which needs to be replaced
"State"	State of Hawaii
"Successor"	a native Hawaiian who qualifies by blood and descent to succeed to the leasehold
"Surrender"	to give up homestead lease, sell improvements back to the Commission

LEI SELLERS (Honolulu, c. 1910)

The sight of landless Hawaiians crowding the streets of Honolulu was part of the motivation for the Hawaiian Homes Act passed by the United States Congress. It was hoped that the program of rehabilitation would also slow the population decline which threatened to make Native Hawaiians a vanishing race.

CHAPTER 6 The Hawaiian Homes Act

The Congressional enactment of the Hawaiian Homes Commission Act in 1920 represented an uneasy convergence of competing interests. An unlikely coalition of plantation interests and Native Hawaiian conditions of that time persuaded the Congress to act. 1/

By the terms of the Organic Act for the then-Territory of Hawai'i, royal leases executed in the Kingdom of Hawai'i continued in force until their negotiated expiration date. Most of these leases were due to expire between 1917 and 1921. As these leases lapsed, the lands would then be subject to the federal law. 2/

According to the provision first written into the "Organic Act" no tract of territorially leased government land was to exceed 1,000 acres. This limitation would greatly diminish the area of any prior royal lease. Lands released by this provision were then available for general homesteading purposes with a petition of 25 citizens of Hawai'i. 3/

Concerted opposition by the plantations - justifiably fearful that such changes in public lands use would be at the expense of agricultural interests and profits - sought to amend the Organic Act. Their proposed amendments repealed the leased acreage ceiling and would have returned all land decisions back to the Territorial Government.

Homesteading programs, though, were of long-standing political concern. The "return to the land" movement endorsed by local Native Hawaiian leaders as a solution to the alienation and decline of the native population, was joined by American traditions which endorsed this public to small private ownership transitions.

Clearly, these interests, under usual circumstances, would have seemed irreconcilable. Instead, by repealing the acreage limitation, replacing the general homesteading process with the Hawaiian Homes Commission Act, and explicitly delineating Hawaiian Home Lands as those which were not under sugar cultivation, a compromise seemed possible.

The Hawaiian Homes Commission Act (Act of July 9, 1921, 42 Stat. 108, c. 42) was enacted by the Congress of the United States along with companion actions eliminating general homesteading and lease acreage limitation in the Organic Act. The stated purpose of the Act was rehabilitating the Hawaiian race through a return to the soil.

PURPOSE OF THE ACT

The purpose of the Act is not specified in the Act itself. However, the Attorney General of the then Territory of Hawai'i placed great reliance on the committee hearings when interpreting the Act. He commented on its purpose in several of his opinions; and on one occasion he stated that the purpose was:

> "...to save the native Hawaiian race from extinction by reason of its inability to meet successfully economic and sociological changes brought about in the islands by reason of the influx of white and asiatic races...Hawaiians would be removed from the slums, be given land to work, and be taught to successfully live in the new cosmopolitan society." 4/

The Attorney General amplified his view of the purpose of the Act by quoting from the statements of Reverend Akaiko Akana who testified at the congressional hearings:

> "...Through this bill those who are inclined to be reckless cannot sell their holding; and should be inclined to be too lazy to be of any value to the idea of rehabilitation, the Commission has the right to remove them, and, in their stead, worthy Hawaiians could be given a chance to secure lands on which to live and to work, instead of being barred out because the worthless ones had already come before them." 5/

Answering the concerns, the goals established in 1920 include that:

1) the Hawaiian must be placed on the land in order to insure his rehabilitation;
2) the alienation of such land, now and in the future must be made impossible;
3) accessible water in adequate amounts must be provided for all tracts; and that
4) the Hawaiian must be financially aided in his farming operations and the construction of a home.

The Act set aside approximately 203,500 acres of public lands for administration by the Hawaiian Homes Commission. The Act also allows persons who have at least one-half Hawaiian blood to become lessees of the Hawaiian Homes Commission and to:

1) Lease lands for 99 years at a rental of $1 per year;
2) Obtain loans for agricultural and grazing operations and for constructing and repairing their homes;
3) Use community pastures;
4) Qualify for real property tax exemptions for the first seven years; and
5) Obtain immunity for their interest in state lands from attachment, levy or sale upon court process.

TRUST VIOLATIONS

From 1920 until 1959, the United States, by its territorial agents, maintained exclusive control over the management of the lands, funds and programs created by the Act. With statehood, the Department of Hawaiian Home Lands (DHHL) assumed primary obligation for management of the lands and programs of the trust. This was accomplished as part of the compact of statehood between the State of Hawai'i and the federal government.

Because the United States (through the Department of the Interior and the United States Congress) reserved certain authority over land exchanges, the amending procedure, and causes for breach, it did not surrender complete management and authority to the state. This supervisory role of the United States has been interpreted as a trust role. According to the Department of the Interior, its role with regard to these lands is nondiscretionary and is more than just ministerial.

The United States, by its creation of the Hawaiian Homes Commission Act in 1921, undertook a trust obligation on behalf of an aboriginal people. The trust responsibilities of the United States and its successor, the State of Hawai'i, are measured by the same strict fiduciary standards applicable to private trusts. Consequently, the responsibilities of the United States include an obligation to administer the trust solely in the interest of the beneficiary and to use reasonable care and skill to make the trust properly productive.

Where the trustee breaches any duty owed to the beneficiary or to the preservation of the trust, the trustee is liable to make reparations and restitution to the trust for any and all of the losses suffered as a result of his breach.

From 1920 to 1959 the above trust responsibilities were exclusively the fiduciary obligations of the United States of America. Upon the granting of statehood, these obligations became and remained the shared obligations of the United States and the State of Hawai'i.

Initial Discrepancies in Acreage

From its inception, the land inventory of the trust was inaccurate as to actual acreage. Under Section 203 of the Act, approximately 203,500+ acres of land in various districts were to be set aside for the purposes of homesteading. Recent land inventory figures indicate that only 188,000 acres were actually set aside for use under the Act. This 15,000+ acre discrepancy is due largely to the fact that no plat maps accompanied the Act at the time of its passage. Subsequently, territorial agents utilized ahupua'a boundaries as a guide to division of lands on plat maps that were later drawn.

Executive Orders & Governor's Proclamations

By nine territorial governor's proclamations and 28 territorial governor's executive orders, the management, use and control of over 30,000 acres of land were transferred to other uses. No compensation was ever made to the trust for these uses, nor were any lands of equal value ever exchanged for these withdrawals as required by the Hawaiian Homes Commission Act.

Many of these illegal withdrawals directly benefited various departments of the United States.

Because of these withdrawals, the land assets of the trust became intermingled with those of the public lands. As a consequence of these land withdrawals and the historical failure of the United States to achieve land exchanges to replace these lands, numerous public facilities, including park facilities, schools, etc., were constructed on Hawaiian Home lands. Because no compensation was ever paid to the department for the uses of these lands, the trust has been deprived of million dollars of revenues.

Withdrawals under "Exceptions" to the Act

Section 203 of the Hawaiian Homes Commission Act granted large acreages of lands for homesteading purposes, subject to certain reservations. The lands that were excluded from the grant were: 1) existing Forest Reserves; 2) cultivated sugar cane lands; 3) lands held under certificate of occupation, homestead lease or right of purchase lease; or 4) lands held under homestead agreement. No inventory was ever compiled to determine the exact amount of acreage held under the above exclusions or to locate these lands within the various grants.

Subsequent to the passage of the Act, territorial agents withdrew lands allegedly under the above exclusions. Evidence indicates that many of the lands withdrawn were not previously held under the exclusions and reservations mentioned above.

Condition of the Trust Upon Surrender to the State of Hawai'i in 1959

No inventory or survey of lands was ever made by the United States government during the time that it administered the Hawaiian Home lands. No inventory of mineral or other trust assets was ever made by the United States government during this time. No land management division within the Hawaiian Homes Commission was ever created by the United States government during the time that it administered the trust.

Upon the granting of statehood, the United States surrendered the management, use and control of the lands withdrawn from the trust to various state agencies other than the Department of Hawaiian Home Lands. No attempt was ever made to marshall the assets of the trust or return lands of equal value through the land exchange procedure. The vast bulk of these lands remain outside the management of the Department of Hawaiian Home Lands at the present time.

Executive Orders & State Governor's Proclamations

Subsequent to the granting of statehood, the State of Hawai'i continued to enjoy free use of the lands withdrawn by its territorial predecessors through the devices of Executive Orders and Governor's Proclamations. The new state agencies which utilized these lands for public purposes did not pay compensation to the Department of Hawaiian Home Lands.

Precedents set by the United States for withdrawals under Executive Orders were continued after statehood. Since 1959, the State of Hawai'i has, by five Executive Orders (no. 2262, No. 2333, No. 2493, No. 2494, No. 2009), withdrawn 2.3 acres of Hawaiian Home Lands for public uses. No compensation was ever paid for the use of these lands, nor were land exchanges consummated to replenish the Department of Hawaiian Home Lands inventory for lands withdrawn.

The State of Hawai'i has never withdrawn Hawaiian Home Lands by Governor's Proclamations.

Takings

In several instances the State of Hawai'i has taken land summarily without documentation. These lands include 66 acres in Nanakuli, O'ahu; 6 acres in Keaukaha, Hawai'i; and 2.64 acres in Waimanalo, O'ahu. The above takings were for use by the Department of Education as public schools. No compensation was ever paid for these uses nor were land exchanges consummated for these withdrawals. Evidence of these takings has surfaced as a result of the DHHL's review of initial plat maps and other references. It is likely that other takings will surface as work proceeds in this area. The amount of acreage taken in this manner has yet to be determined.

Leasing and Other Practices

Until 1964, the Department of Land and Natural Resources (DLNR) was authorized to general lease lands not needed by the DHHL for purposes of the Act. Under relevant state statutes, rental value for such lands was to be set by appraisal, but might be nominal if direct benefit to the DHHL or its beneficiaries was shown. In 1964, the DHHL was authorized to general lease its own lands for the first time, and the practices of DLNR leasing abated.

From 1959 to 1964 the Department of Land and Natural Resources issued numerous general leases to the state, federal and other private persons for nominal or no consideration. The majority of these leases did not benefit the DHHL or its lessees.

As a consequence of the above actions, the trust was deprived of needed revenues, and many thousands of acres of land were encumbered by non-beneficiary uses.

A cursory review of the outstanding leases, licenses, rights-of-entry and permits maintained and managed by the DHHL verifies that the vast bulk of these lands are being utilized by non-beneficiaries to the detriment of the DHHL and its beneficiaries.

Inventory and Management

The State of Hawai'i has never conducted a comprehensive survey to identify and locate the Hawaiian Home lands, nor has it inventoried any mineral, water or other assets that are appurtenant to these lands.

A review of the history of the Department of Hawaiian Home Lands illustrates that since 1960 the Department has attempted to achieve land exchanges in order to rectify past problems. None of these land exchanges have been successful. The finding of the U.S. Inspector General that the State of Hawai'i, by and through its various agencies, has not allocated any priority status to the solution of this problem has not been refuted.

Until 1975, neither the State of Hawai'i nor its predecessor, the United States, had created a land management division within the Department of Hawaiian Home Lands to facilitate the management of its vast land holdings. As a consequence of the above, the Department continues to be plagued by management problems.

There is no cohesive or integrated administrative system within the department. The functions of the various divisions of the department (Income and Maintenance, Legal, Land Management, etc.) are not clearly defined. Consequently, the various intra-departmental divisions of the DHHL do not interface efficiently. There is a need for a management audit and expertise to streamline the administrative capacity of the department in order to facilitate and standardize intra-departmental practices. Until this is achieved, the DHHL will be unable to fully services its lessees or process its applications.

At present, certain land management policies followed by the department are not based on the provisions of the Act. The DHHL has been following a practice of generating revenues for its own administrative costs by leasing homestead lands to non-beneficiaries. Consequently, 80% of the lands have been leased to non-beneficiaries. All management policies of the DHHL need to be reviewed in order to insure that the practices of land management followed by the department are to maximize benefits to the lessees, and are within the constraints of the purposes of the Act.

Many of the problems relating to the failure of the department to complete an inventory and streamline its management system and practices are directly related to a lack of funding. Although a 1978 amendment passed at the Constitutional Convention provided that the Legislature must fund the DHHL, the department has in the past been unsuccessful in obtaining funds from the Legislature and consequently abandoned its efforts in this area.

Land Exchanges: United States and State of Hawai'i Involvement

Section 204 of the Hawaiian Homes Commission Act allows the DHHL to exchange available lands for private or public lands of equal value. This can only be done in order to allow the DHHL to consolidate its holdings or to better effectuate the purposes of the Act.

There have been seven land exchanges under the provisions of Section 204 of the Act. Two were approved by congressional legislation and five have been approved by the Secretary of the Interior. The seven approved exchanges involved 3,021 acres of Hawaiian Home lands. For these lands, 6,924 acres of other public or private lands were exchanged. The last such exchange was approved in 1967. Only 19.5% of the land (1,384 acres) received by the DHHL in these exchanges is currently used for homestead purposes. Seventy-five percent of the lands (5,193 acres) are under general leases and revocable permits that generate $30,000 in annual revenues. The propriety of 3 of these 7 exchanges are questionable. Two of these exchanges were accomplished on an acre for acre basis and were not supported by appraisals. A third exchange involving the total of 268 acres of Hawaiian Home lands on the islands of Hawai'i, Kaua'i, Moloka'i and O'ahu occurred in 1966. For these lands the DHHL received 5,007 acres of public lands on the island of Hawaii. THe values of the lands to be conveyed by the DHHL were based on tax assessment values in the year each area was available for state (1962 through 1963); the values of the lands to be conveyed by the state were based on the 1966 tax assessment values. The state retained the mineral rights to the state lands that were exchanged with the DHHL.

In 1920 it was known that at least 40,000 native Hawaiians were not landowners. If the goal of the program was to place as many of these landless Hawaiians on a plot of their own, a realistic appraisal of the resources necessary to accomplish this objective was needed. A loan ceiling of $3,000 was established as the limit for each lessee to clear a lot and build a home (this limit remained in force until 1947), the revenues from 'cane and water' established as the major if not the sole source of support could have easily been projected for such an appraisal.

Thus, if the goal was to award lots to 20,000 of the 40,000 eligible, the total funding requirement would be $60 million. If the cane and water revenues were sufficient to support this goal or if the incremental plan was to place the 20,000 on the land in 30 years, 666 awards a year, the minimum funding required would be $2 million annually for the needed loans.

If the plan was less ambitious and meant to only award 10,000 lots in 30 years, the minimum loan fund requirements would be $1 million a year for the first 10 years.

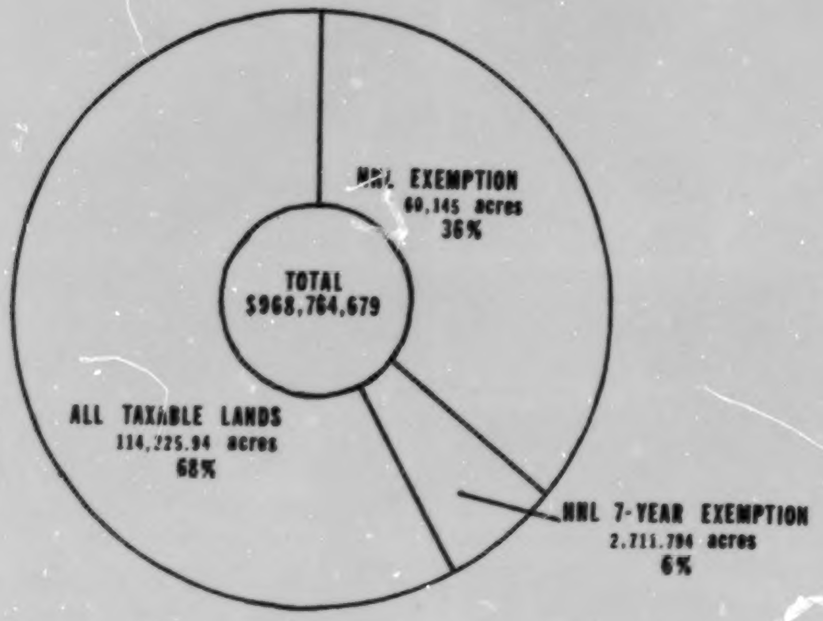
Obviously no such calculations were done.

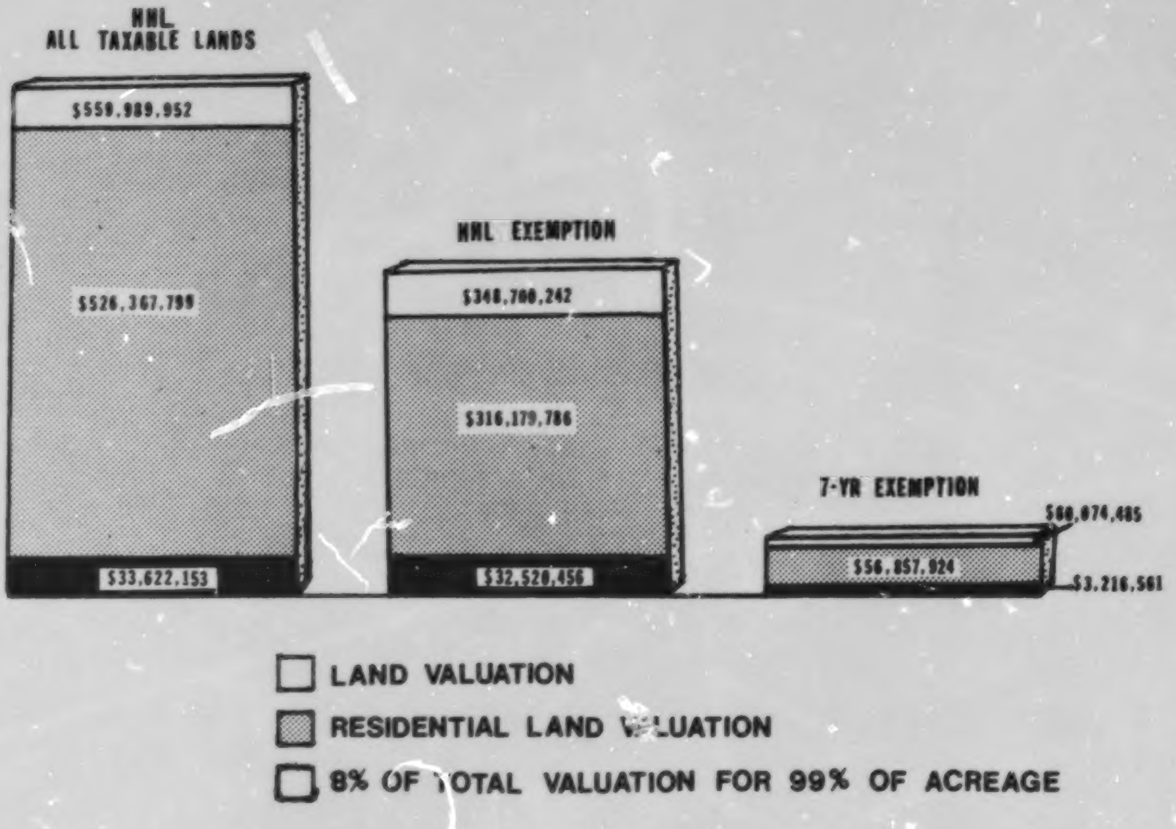
Twelve years after the passage of the Act, in 1933, the cane and water revenue source had only accrued $2 million, a meager $116,666 a year: sufficient for only 50 awards a year, if all the funds were utilized for loans.

In 60 years, the Act's revenue base has only generated $12 million. And the problem has been compounded by homestead non-loan programs. Since the inception of the program, the revenues have been divided as follows:

$ 4,500,000 for loans,
$ 1,887,500 for site development,

REAL PROPERTY VALUATIONS BY TAX CATEGORY





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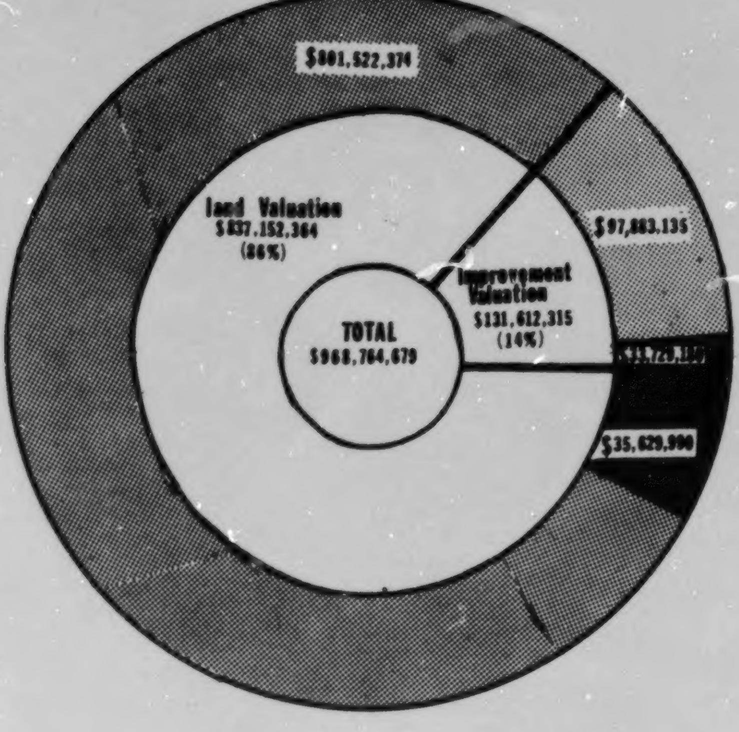
Real Property Tax Valuation of Hawaiian Home Lands



▨ RESIDENTIAL LAND VALUATION

■ 8% OF TOTAL VALUATION FOR 99% OF ACREAGE

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$ 3,612,500 for education, and
$ 2,000,000 for rehabilitation.

The last two categories were not explicit in the Act. Legislative action by the Territory diverted revenues directly to the general fund of Hawai'i as a reimbursement for public support of schools located near, but not confined to teaching homestead children. After Statehood, this practice continued, but with the modification of using Hawaiian Homes revenues for special educational projects in homestead areas. These programs, too, however, were not restricted to beneficiaries of the Act.

In 1978, these sugar and cane revenues were earmarked for a Rehabilitation Fund directly administered by the Department. This State Constitutional mandate, however, has not been utilized for explicit homesite purposes.

Beyond these considerations, however, even additional funding efforts by the Territory and State of Hawai'i have failed to increase the overall performance beyond a shameful 50 awards a year: a 60-year accomplishment overall of placing 3,034 lessees on the land.

The current capitalization of loan funds in the Department is $33 million in loans.

The State has appropriated $28.5 million of this $33 million in revolving loan for account.

Records available since 1971 record total State appropriations of $68 million in bond funds an average of $6.8 million a year.

The only Federal appropriation seems to be $87,000 in grants in 1935.

LIMITED FINANCIAL RESOURCES

The Hawaiian Homes Program, as presently constituted, depends on severely limited financial resources. Though the revenues available to the program may be increased to a limited extent, there is presently no indication that such increases would be of major dimensions. The bulk of the program's present income is generated by leasing Hawaiian lands to private non-beneficiary users.

However, no economically feasible alternative use is foreseen for these lands which would result in substantially increasing the revenues of the Department. Nor is there any reasonable prospect of growth in the sugar, pineapple or ranching industries in Hawai'i which would increase income or serve to enhance the value of Hawaiian home lands significantly.

In addition, there is no reason to expect that substantial sums will be appropriated from the State's general fund, to supplement the program's income. Three major considerations point to this conclusion: (1) the State's general fund is under heavy pressure to meet the demands of public programs; (2) State revenues are not likely to be enlarged by tax increases or economic growth; and (3) legislators have an understandable, as well as traditional, reluctance to appropriate limited general public resources to support special fund agencies.

In summary, necessary funds are not now being provided by Congressionally mandated sources, Department general leasing, or supplemental State appropriations. Inadequate today, there is little likelihood of improvement in the future.

The only alternative funding possibilities may be the resources already in the possession of the Department and beneficiaries.

The quality and revenue potential of the Hawaiian Home Lands can be quickly assessed from the State Tax Department review of the real property valuations. All categories of Hawaiian Home Lands combined have a total valuation of about $970,000,000.

Current provisions in the Act, however, hamper realizing the funding potential of these assets. Chief among the problems are:

1) The 5-year withdrawal clause which deters investing in long-term improvements; a handicap reflected in lower average per-parcel improvement valuations, even

when compared with average homestead residential lease valuation; and

2) Long-term leases negotiated by the State Board of Land and Natural Resources - a practice ended in 1978, but with continuing implications.

As indicated by Tax Department figures, the greatest portion of the trust value is held in beneficiary awards.

According to the State Tax Department valuation of homesteads:

The average land valuation per parcel is $280,743.30
The average improvement valuation per parcel is $34,284.80
The average total valuation per parcel is $315,028.80

By the provisions of the Act, however, homesteaders are prohibited from utilizing their equity.

THE PROBLEM OF THE NON-ALIENATION CLAUSE

The most arresting clause in the Act is Section 208(5), the non-alienation clause. The constraints imposed on the transferability of the property received has been the greatest deterrent to the sought-after goal labeled rehabilitation.

> The lessee shall not in any manner transfer to, or mortgage, pledge, or otherwise hold for the benefit of, any other person or group of persons or organizations of any kind, except a native Hawaiian or Hawaiians, and then only upon the approval of the department, or agree to transfer, mortgage, pledge, or otherwise hold, his interest in the tract. Such interest shall not, except in pursuance of such a transfer, mortgage, or pledge to or holding for or agreement with a native Hawaiian or Hawaiians approved by the department, or for any indebtedness due the department or for taxes, or for any other indebtedness the payment of which has been assured by the

> department, be subject to attachment, levy, or sale upon court process. The lessee shall not sublet his interest in the tract or improvements thereon.

This clause has denied the native Hawaiian his:

1) "Bundle of Rights" on the land,

2) Equity accumulated with his improvements, and

3) Independence and right to plan his own future, and live his own life.

The problems caused by this clause is the source for much of the bitterness evidenced in the Hawaiian homestead community. Moreover, the Congressional records indicate that this crucial balance between the necessary trust provisions assuring the inalienability of the title to the lands, and the necessary individual homesteader property rights was intended, but remained unmet.

PRECLUDES PRIVATE FINANCING

The most damaging feature of the clause is the fact that it precludes independent solicitation of financing from the private sector. Denied this right, the lessee is forever dependent upon the Department.

Financial institutions in the private sector have repeatedly attempted to find ways in which they could assist with the needed funding. The stringent stipulations and the fact that the Act requires the Department to have first lien rights [Section 2(6)] makes the venture imprudent and impractical for them. Subsequently, financing is only available from legislative appropriations or other governmental programs on a guaranteed payback agreement.

The lessee is denied his "bundle of rights" on the land: the right to control, enjoy, use and even dispose. Too many homesteaders have been alienated from the land for the non-alienation clause to be justifiable or practical as it applies to the individual tenant. Certainly the land should be protected from alienation from the corpus of the estate.

That can easily be achieved by amendatory legislation giving the homesteader leasehold interests in the land, with rights to dispose the lease but not the fee title.

The Hawaiian Homes homesteading program has implied that land tenure is transitory. The lessee has no sure security against eviction from his land, for any one of a variety of causes, and he cannot but be aware of the fact that at some date, however far in the future, the lease will be subject to renewal. At that time, the land may be lost to him or his heirs; as applied to the Hawaiian Homes program, this realization may well serve to dampen enthusiasm for maximum development of the land.

The lessee was also placed on the land rent-free as an opportunity to restore himself. He received no security interest in the land, however, to permit leveraging of its value to assist in his adaption to a capitalistic economy. It was no longer possible to subsist solely off the land since capital was required for utilities, education, clothing and transportation, particularly when he was placed in rural communities detached from job opportunities.

1) After sixty years, it is time to review the 1920 stereotype of the Hawaiian as lazy, reckless and incapable of making prudent decisions and to make necessary changes in the law to permit such maturity.

2) Further, what the individual homesteader could then do for himself cannot now be done by this Department.

LOANS LIMITED

There are 24,732 acres of farm and ranch lands which have been awarded to date. The farm loan capitalization is $2,219,769. That sum reflects a recent increase, for only a few years ago it was capitalized at $750,000 or $30 an acre. After the start of the program homesteaders were only awarded $3,000 apiece to clear the land, construct a home and start their venture.

The applicants wait because funding is not available. The homesteaders wait because funding is not available.

REPLACEMENT HOME HUMILIATION

Perhaps the most humiliating dependency created as a result of the lessees' alienation from the possession of land interest is the inability to secure independent financing for a replacement home.

There are 2,859 residences on Hawaiian Home Lands. At least 50% of these homes are older than 30 years. The chronic shortage of funds forced early awardees to resort to the purchase of surplus homes which already were in a state of deterioration. The makeshift structures of the early years has created a pervasive problem and compounds fund requirements for replacement construction.

In the history of the Act, the 60-year span, more than 3,034 awards have been made. Hundreds of homesteaders were alienated, forced to abandon their unlivable, unsafe homes, because funds were not available. Years later these vacant lots were reawarded.

The replacement loan fund is capitalized at $6,328,582, all of which is encumbered. Besides the prohibitive fund requirements needed to provide housing for 6,388 applicants, the Department must plan for a fund source to replace at least 800 homes. The additional fund requirement of $40,000,000 is not as yet costly since the on-site improvements are already installed. The Department and not the lessee is also responsible for the County district improvement assessments for these older subdivisions.

THE PROBLEM OF THE FARM AND RANCH PROGRAMS

The Act of 1920 envisioned that the homesteading program was one which would be oriented toward agricultural homesteading. In keeping with the goal of rehabilitation, the Act intentionally excluded from the available lands all prime agricultural lands including the cultivated sugar lands. The exclusion left Hawaiians with access to only marginal lands. It was felt by the drafters of the Act that the lessees on these lands would try to develop and upgrade these parcels of land into more productive lands. In this effort, the Hawaiian homesteaders would gain economic security, character development, and increased motivation to improve themselves. However, the critical elements needed to develop such lands - water, technical expertise, and money - were all too frequently absent at the beginning.

The designers of the Act had reasoned that since Hawaiians had experienced life on communes previous to discovery, that the best program to rehabilitate these victimized individuals was to create an anachronistic capsulized environment of that period. Several generations, 142 years after discovery and suffering the effects of a devastating century, the Hawaiian was expected to return to another time, not to the land.

The preference of the beneficiaries was opposed to the concept of rehabilitation by farming and subsistence off the land. The preference was for a use of the land as home sites and adaptation congruent with the times, to hold jobs away from home and in most instances not be directly involved with the land. allow adaptation congruent with the times; i.e., to take vocational pursuits away on homes and in some instances not involved with the land.

LOAN CAPITALIZATION

The meager capitalization of $2,219,769 for the loan fund sets its own limits. That the fund has never been fully utilized reflects the disinterest as well as the inability of the active farmers to borrow more than the allowable loan limit which is now $50,000. If all the farms and ranches were in active productivity and cultivation, the 416 ranchers and farmers on 24,732 acres of land could divide the available monies and each receive either $5,335.9 apiece (if shared evenly among the 416 ranchers and farmers) or receive $89.75 per acre (if prorated on the basis of acreage in award). A rancher of 248 acres could rely on a loan fund capitalization from the department of $22,258 to develop his ranch. Were every one interested, there would not be sufficient funds. And for the interested, the loan limit imposes an unnecessary hardship as the unused funds sit idly.

The denial of homestead rights, particularly the prohibitions against mortgaging the equity of the award and the right to name a successor, can encourage a speculative use of the lands.

SPECULATION IS THE NEMESIS OF THE PROGRAM

The buy-back provision in the Act is the only avenue open to the homesteader to take advantage of the equity accumulated in his home. Lessees more aware of this loophole have blatantly speculated, e.g., 1,000 homes were built in 1975-76-77-78 for $25,000, and no down payment was required of the lessee. Monthly mortgage payments were $200. Three years later some of these homes were surrendered to the Commission for two to five times the original cost. The Commission was obliged by the statute to pay the homesteaders the cash difference of $25,000 to $50,000. These monies are taken from loan funds which would have been available for new home construction. To compound the problem, the applicant receiving the surrendered home is obliged to pay this unrealistic market rate of $75,000.

The investment in the Hawaiian Homes program is the best speculative deal in town. For an investment of a monthly rent of $200 per month for three years, or $7,200, a homesteader who surrendered his new home has actually received a cash return of $64,000--a 694.4% return if rent is counted as his investment. This practice is escalating and can only create more of a financial dilemma for an already fund-short program.

The tax valuation for all residential lot improvements is $97,883,135. The capitalization of all loan funds and loan guarantee limit is $30 million for loans and $13 million for guarantees. Obviously there would be severe solvency problems should there be a run to surrender homestead lots. Should this occur, the responsibility for liability of the Federal government or the State for payment, certainly not the commission, is not defined.

RIGHT TO NAME A SUCCESSOR

Equity in land is also closely-tied in law to inheritance rights. These fundamental rights are also not guaranteed to the homesteader.

Dr. Keesing stressed the problems caused and to be anticipated by the successor blood requirement in his comprehensive 1936 audit. Subsequently every other audit of genuine concern has discussed the contradiction of this requirement and the resultant insecurity and distress it has caused the homesteader. As long as the descendant retains 50% Hawaiian blood he remains on the land under the terms of a new 99-year lease. However, if the descendant is determined to be less that 50% Hawaiian, he is evicted in favor of another qualified applicant.

Needless to say, such a situation has created problems. The homes are essentially being treated as rental units. Maintenance, repairs, or improvements are rarely performed. When an individual sees his home which will most likely not be passed on to his descendants, he loses interest and concerns himself only with day-to-day matters. Such an attitude carries over to repayment of loans.

In 1976, a sample of 50% of all lessees revealed that 16.7% did not have qualified heirs in their immediate family. At the time this represented 329 families. The pending legislation to modify this quantum for successors is imperative and 60 years overdue. The purpose of the Act was for the benefit of Hawaiian families to encourage continued use, to reinforce the security of their tenancy so integral to family living and productivity.

THE PROBLEM OF THE 50% BLOOD QUANTUM REQUIREMENT TO QUALIFY

The blood quantum question is subtly injected in each review or audit of the program. The inference is that once the eligible 'native Hawaiians' on the list are depleted, the program can be discontinued and the 'available lands' would revert to the State. Hence, the hovering questions: How many 'native Hawaiians' are there in the State? And how much land will be required to serve their needs? And, the future of this program can only be decided by a census of the Hawaiian people. Until then the 'sword of Damocles' hangs threateningly over the future status of the land officials ready to terminate the program when all have been served.

Clarification of this land award is of paramount importance. Not at any time was it ever intimated that these 'available lands' set aside by the Congress of the United States as restitution to the Native Hawaiians was meant to be an interim award. This trust of lands was created in perpetuity, to reason otherwise is inane.

Congressman Strong and Secretary of the Interior Lane discussed this very point in the hearings for the establishment of the Act:

> Mr. Strong: Now, the land that might not be set apart, that might not be occupied by Hawaiians should be rented by this commission and the proceeds taken by the commission to be used in the development of lands until such time as they would want it.
>
> Secretary Lane: No; I doubt that. They already have a land commission there, a land board that is handling these lands. I would not disturb that. I would continue to let them handle all of the land that did not go into these specific purposes.
>
> Mr. Strong: I know, but the lands themselves should be kept until such times as the Hawaiians might need them. You have said here that they were vanishing rather rapidly. We hope by this legislation to aid them to recuperate and they might 50 or 100 years from now want all of this land, and we ought to keep it for them.
>
> Secretary Lane: I think you might very well reserve a sufficient body of the land to take care of the future. I would not say that all or a great part would be of any use to them.

The blood quantum issue, in the first measures introduced, were only to assure that Hawaiians benefited from the Act.

One listed no specific quantum except the requirement to be a descendant of those who inhabited the Islands previous to 1778. The second listed a blood quantum of 1/32 Hawaiian.

The only reason the 50% quantum was finally agreed upon was to assure that those with the greatest Hawaiian blood quantum would receive preferential selection initially. Again a review of the numbers is necessary.

In 1920, the total Hawaiian population was:

23,723 pure Hawaiian	9.3% of population
18,027 part Hawaiian	7.0% of population
41,750 Total	16.3% of population

Sixty years after passage of this Act only 3,034 awards were made and only 26,000 acres of the land distributed. At this rate of awarding it would take 460 years to award 23,000 homesteads to the pure Hawaiians only. This tragedy is the plight of beneficiaries.

The blood quantum is pertinent only as the criterion for initial awards; thereafter, any descendant who is without land should qualify.

The overwhelming majority of Hawaiian Homes beneficiaries have not encountered these difficulties. Why? Because they do not have an award. There are 7,000 applicants on the waiting list. The Department acknowledged that at least 19% of those on the list were not considered current. They had died, moved, or just given up from waiting so long. The Deputy Attorney General issued an opinion in 1977 which disallowed the removal of any names from the list unless there was proof of death or a notarized authorization.

Using an adjusted list of 6,000, the most realistic prospect of depleting the list using the performance rate to date can be expected in 120 years. At least half of the awardees would be 80 years of age.

If these 'available lands' were distributed on schedule per the identical rate for the 3,000 awards, all 23,000 pure Hawaiians or their descendants would have received an award 10 years ago in 1971.

The objective of rehabilitation was to restore the right of native Hawaiians to their lands. We have failed miserably to achieve this one aspect of the goal.

PART III

THE NATIVE HAWAIIAN PEOPLE

CHAPTER 8 The Native Hawaiians

The consequences of the overthrow of the Kingdom of Hawai'i by the United States are not confined to historical wrong or compensable claims for lost ancestral land rights and interests.

Dispossession and defeat also have psychological, social and cultural consequences for Native Hawaiians. By all major social indices -- health, education, employment, income -- Native Hawaiians display distinct disparaties with their fellow citizens.

Health Concerns. The impact of Western diseases on Native Hawaiians was historically devastating. Waves of epidemics reduced the estimated contact population of 300,000 in 1778, to 34,000 by 1893. The implications of this decimation have been considered in a variety of contexts.

Western observers, beginning in 1838, noted that unless some dramatic improvement were made in the health conditions of Native Hawaiians that the race would disappear. These initial feelings of horror and dismay over the fatal impact of Western contact gradually altered.

After the publication of Darwin's Origin of Species, Europeans and Americans began to adopt the attitudes and policies of Social Darwinism. The theory of "the survival of the fittest" was applied to nations, and validated Western expansion and imperialism as the natural working out of an inevitable progression of conquest and colonization.

Acquired immunity and inter-marriage among Native Hawaiians, however, was reversing this trend. Demographic trends now indicate that the population had reached its lowest level in the final decade of the 19th century, would stabilize for about twenty years, and then begin a dramatic recovery.

Today's Native Hawaiian population numbers an estimated 175,000 individuals, more than half of whom are less than 19 years old.

The health characteristics of this group, however, are adversely and consistently affected by mental health disorders, stress-related diseases, and an absence of culturally-sensitive health professionals.

As developed in depth within the body of this study, the following findings are offered:

- the psychological despair and sense of being a conquered people in their own homeland is a factor in the health conditions of Native Hawaiians;
- Native Hawaiians have the lowest life expectancy of any ethnic group in the State of Hawai'i: 67 years compared to a Statewide average of 74 years;
- the leading causes of death for Native Hawaiians, in order of prevalence, are heart diseases, cancers, stroke and accidents;
- Native Hawaiians have the highest infant death rate in the State of Hawai'i: 14 per 1,000 live births compared to a statewide average of 10 per thousand;
- mental health assessments indicate that Native Hawaiians have a higher-than expected incidence of personality disorders, mental retardation, and drug abuse than their proportion of the population; and
- suicide rates among Native Hawaiian males (statistics are unavailable for females) is the highest in the State of Hawai'i: 22.5 per 100,000 in the population, compared to a rate of 13.5 for males of all races in Hawai'i -- rates in the 20-34 year age group of Native Hawaiians was even higher.

Native Hawaiians continue to experience a form of fatal impact usually associated with the last century.

Neither Hawaiian nor Western medicine has effectively halted the damage.

Educational Concerns. In the perceived needs assessments conducted by Alu Like, Inc., and additional polling done by the University of Hawai'i, education has consistently received top priority among Native Hawaiians as an identified need.

These surveys and accompanying in-depth interviews contradict the impression often conveyed among professional educators that Native Hawaiian performance in schools is a consequence of not caring about or actively endorsing education by Hawaiian families.

A number of independent studies, particularly the extensive research published by John Callimore, substantiate that:

-- Native Hawaiian children are raised with distinctive values, behaviors, and styles; and

-- that these differences, unless recognized and accommodated, are in conflict with dominant Western modes.

The Bishop Estate and Kamehameha Schools have recently completed a comprehensive Native Hawaiian Educational Assessment Project. Their report has been submitted to U.S. Secretary Bell of the Department of Education. We wish to include their report, findings and recommendations by reference.

Certain salient findings of this Commission are offered in addition:

* 30% of the school-age population of the State of Hawai'i is Native Hawaiian;

* Native Hawaiian students have the highest rates of academic and behavioral problems in the State, the highest levels of absenteeism, and the lowest levels of performance achievement; and

* only 4.6% of all adult Hawaiians over 25 years of age have completed college,

compared to a Statewide average of 11.3%, and only 12.3% have had "some college" compared to a Statewide average of 15.6%.

Employment and Income. Directly correlated to educational achievement are employment and income statistics. Also a factor in these areas are family size and the large number of Hawaiian families with a female or single parent head-of-household:

- nearly 30% of all Native Hawaiian families fall below the poverty line;
- Native Hawaiians are disproportionately represented in blue-collar occupations, and under-represented in technical or managerial positions;
- Native Hawaiians are significantly over-represented in unemployment benefit and Aid to Families with Dependent Children programs.

RECOMMENDATION

Based on the findings in all of the social categories, Native Hawaiians demonstrate the same distinct disadvantages experienced by other indigenous peoples of the United States.

Congressional recognition of this unique attribute has resulted in the passage and implementation of Native American programs. Presently, Native Hawaiians are not consistently included in these efforts.

Therefore we recommend:

- the inclusion of Native Hawaiians in all Native American programs, without prejudice;
- a concerted study by federal and state professionals to adequately assess the needs of Native Hawaiians, and to provide additional assistance from existing programs;

- the consideration of special Native Hawaiian programs at the federal level to redress these disadvantages.

Further, while there has been no one definition of Native American, there are now two Congressionally-established definitions for Native Hawaiians. The definition applied to Native Hawaiians for purposes of the Hawaiian Homes Act and the 5(f) trust of the Admissions Act is:

> "...Native Hawaiian means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778..."

This "blood quantum" definition of 50 per cent or more Hawaiian blood is significantly different from that established by the Congress in the last ten years, and which guides this Commission:

> "...the term "Native Hawaiian" means any individual whose ancestors were natives of the area which consisted the Hawaiian Islands prior to 1778..."

This definition sets no blood quantum for Native Hawaiian. The date 1778 used in both definitions is a reference to the arrival of Captain James Cook, usually accepted as the first Western or non-native contact with the islands over a period of approximately 1,000 years.

We have purposely chosen to discuss the implications and need for reuniting the Native Hawaiians as a single people separate from the concerns of the Hawaiian Homes Program. The issue of "blood quantum" is basically a cultural concern. A traditional and persistent value and characteristic of Native Hawaiians is an extended kinship system and deep affection for family.

As noted Hawaiian scholar Mary Kawena Puku'i explained:

> "...(ohana) is a sense of unity, shared involvement, and shared responsibility. It is mutual interdependence and mutual

> help. It is emotional support, given and received. It is solidarity and cohesiveness. It is love -- often; it is loyalty -- always. It is all this, encompassed by the joined links of blood relationship..."

Fundamentally in conflict with the value of 'ohana in the Hawaiian culture is the blood quantum division of the two Native Hawaiian definitions. As a legislative committee report noted:

> "...the time has come to include all native Hawaiians, regardless of blood quantum, for the numbers of descendants is increasing. This qualification [the 50 per cent quantum] has proved to be a factor in dividing the Hawaiian community; mothers and fathers from their children, cousins from cousins, and friends from friends..."

That destructive division, however, is not within the power of the State Legislature to change. Only the Congress, with its authority to amend the Hawaiian Homes Act definition has that power.

There is a new pride and determination growing among Native Hawaiians to assert themselves as a people. On an issue such as this one, there is little to cite except numbers for documentation of the need for this change. And that growth in population, youth, and renewal of cultural interest is still not captured in its essence.

RECOMMENDATION

- That the Congress of the United States adopt a single definition of Native Hawaiian to mean any individual whose ancestors were natives of the area which constituted the Hawaiian Islands prior to 1778. Proper guarantees to protect the rights and privileges of those now holding or awaiting a Hawaiian Homes award should accompany this change.

PART IV

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11. Lili'uokalani, *Hawaii's Story by Hawaii's Queen* (Rutland, Vermont 1971); p. 387. [Hereinafter cited as Lili'uokalani.]

12. In President's Message Relating to the Hawaiian Islands of December 18, 1893, *Messages and Papers of the Presidents*, 356-357 [Hereinafter cited as Cleveland's Message.]

13. Statement of W. O. Smith in J. Blount, "Report to United States Congress: Hawaiian Islands," Exec. Doc. No. 47, 53rd Cong., 2d Sess., 1893. [Hereinafter cited as Blount's Report.]

14. *Ibid*.

15. *Ibid*., Statements of J. F. Colbun and S. Parker at 34 and 442, respectively.

16. Unpublished Letter and Memorandum of Thurston to Blaine, (May 27, 1892) quoted in "The Hawaiian Revolution: A Re-Interpretation," "Pacific Historical Review" 1, No. 3 (1932); p. 287.

17. *Op*. *cit*., Memoirs, p. 250.

18. *Op*. *cit*., Blount, Statement of W. O. Smith; p. 497.

19. *Op*. *cit*., Hawaiian Kingdom, note 68, p. 595.

20. *Op*. *cit*., Memoirs, Note 70, pp. 267-269.

21. *Op*. *cit*., Hawaiian Kingdom, p. 597.

22. *Op*. *cit*., Blount's Report, Peterson, Note 76, p. 469.

23. *Op*. *cit*., Foreign Relations, "Minutes" enclosure, p. 19.

24. *Op* *cit*., Hawaiian Kingdom, Note 68, p. 601.

25. *Op*. *cit*., Lili'uokalani, p. 387.

26. *Op*. *cit*., Foreign Relations, Stevens to Foster, dated February 1, 1893, p. 26.

27. *Op*. *cit*., Blount.

28. *Ibid*., Lili'uokalani, p. 387.

29. *Op*. *cit*., Hawaiian Kingdom, p. 608

30. Thomas J. Osborne, *Empire Can Wait*; (Kent, Ohio, 1981); pp. 10-16. [Hereinafter cited as Empire]

31. *Op. cit.*, Blount's Report, Note 76, pp. 13-24, 35-37, and 59-62.

32. *Ibid.*

33. *Op. cit.*, Hawaiian Kingdom, pp. 50-60.

34. *Op. cit.*, Lili'uokalani, pp. 243-251.

35. *Op. cit.*, Betrayal, p. 294.

36. *Op. cit.*, Foreign Relations, Hawaiian Special Commission to Mr. Foster, letter dated February 3, 1893, enc. D., pp. 32-36.

37. *Op. cit.*, Hawaiian Kingdom, pp. 645-646.

38. *Op. cit.*, Hawaiian Kingdom, p. 608.

39. *Ibid.*, Hawaiian Kingdom, p. 360.

40. *Op. cit.*, Foreign Relations, Stevens to Foster, (February 1, 1893) p. 47.

41. *Ibid.*, p. 48.

42. *Ibid.*, Stevens to Foster (February 1, 1893) enc. p. 60.

43. *Op. cit.*, Empire, p. 10.

FOOTONOTES

Chapter 3

1. *See*, T. Osborne, *Empire Can Wait*, 10-16 (1981) for a discussion of Cleveland's purposes in withdrawing the treaty.

2. *See*, for instance, *Blount's Report*, *supra* note 76, at 13-24, 35-37, and 59-62.

3. *Id*.

4. Osborne, *supra* note 92, at 50-60.

5. Liliuokalani's Diary, cited in 3 *Hawaiian Kingdom*, *supra* note 68, at 642.

6. Liliuokalani, *supra* note 89, at 243-251.

7. 3 *Hawaiian Kingdom*, *supra* note 68, at 645-646.

8. *Id*.

9. *Id*., at 360.

10. *Id*., at 361-362.

11. *Id*., at 364.

12. Osborne, *supra* note 92, at 74-80.

13. S.R. No. 277, 53rd Cong. 2d Sess. 35, at 21 (1894).

14. 3 *Hawaiian Kingdom*, *supra* note 68, at 649.

15. W. A. Russ, Jr., *The Hawaiian Republic (1894-1898)*, 33-34 (1961).

16. The Constitution provided:

> "That portion of the public domain heretofore known as crown land is hereby declared to have

> been heretofore, and now to be, the property of the Hawaiian Government, and to be now free and clear from any trust of or concerning the same, and from all claim of any nation whatsover upon the rents, issues, and profits thereof."

Thurston, supra note 16, at 237.

17. Russ, supra note 107, at 36.

18. Liliuokalani, supra note 89, at 273-277.

FOOTNOTES

Chapter 4

1. See, e.g., Northwest Band of Shoshone Indians v. United States, 324 U. S. 335 (1945).

2. American Indian Land Claims: Land Versus Money As A Remedy, 25 Univ. of Fla. L. R. 308, 315 (1973).

3. 25 U.S.C. §§ 70 et seq.

4. 92 Cong. Rec. 5312 (1946).

5. 25 U. S. C. §70(a)

6. Id.

7. 131 Ct. Cl. 593, 131 F. Supp. 265 (1955).

8. United States Indian Claims Commission, Final Report, (1978).

9. Public Law No. 92-203, 85 Stat. 688, 43 U. S. C. §160 et seq.

10. Treaty of June 21, 1867, 15 Stat. 539.

11. Alaska Organic Act, 23 Stat. 24, §8.

12. See generally, Lazarus & West, The Alaska Native Claims Settlement Act: A Flawed Victory, 40 Law & Contemp. Prob. 132 (1976) for a discussion of the factors leading to the Settlement Act.

13. Id.

14. See, eg. Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 528 F.2d 370 (1st Cir. 1975).

15. 94 Stat. 1785 (1980)

16. 92 Stat. 813 (1978)

17. *Cherokee Nation v. Georgia*, 30 U. S. (5 Pet.) 1, 17 (1831).

18. *United States v. Wheeler*, 435 U.S. 313, 323 (1977).

19. *See* text accompanying notes 65, *infra*.

20. 5 Stat. 643 (1843). George Brown was the first to serve as "Commissioner of the United States for the Sandwich Islands."

21. *See*, 9 Stat. 977; 19 Stat. 625; 25 Stat. 1399.

22. Permanent Court of International Justice, Status of Eastern Carelia, Advisory Opinion, P.C.I.J., $ B, No. 5, at 27 (1923) (cited in Sen. Daniel Inouye's Response to NHSC Draft Report).

23. R. Kuykendall, *The Hawaiian Kingdom 1874-1893*, 587, lists the following as members of the Committee of Safety:

> H. E. Cooper, F. W. McChesney, T. F. Landsing and M. A. McCandless, who were Americans, W. O. Smith, L. A. Thurston, W. R. Castle and A. S. Wilcox, who were Hawaiian born of American parents; W. C. Wilder, American, C. Bolte, German, and Henry Waterhouse, Tasmanian, who were naturalized Hawaiian citizens, Andrew Brown, Scotchman, and H. F. Glade, German who were not. After a day or two, Glade and Wilcox resigned, Glade because he was German consul and Wilcox because he had to return to Kauai; Ed. Suhr, a German, and John Emmeluth, an American, replaced them on the committee.

5 of these men were credited by L. A. Thurston with helping to draft the Constitution of 1887. *Id.* at 367.

24. W. A. Russ, *The Hawaiian Republic* (1894-1898), 26-34 (1961).

25. As opposed to 466 Americans, 274 from England and its colonies, 175 Germans, 362 Portuguese, and 131 others. *Id.*, at 46.

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26. *Id*., 49-104, particularly 82-94.

27. *See*, *e.g.* *id*., at 189, 209; *See*, *also* 31 Cong. Rec. 6702 (1898).

28. *Russ*, *supra* note 31, at 328.

29. *See*, discussion in *Felix S. Cohen's Handbook of Federal Indian Law* (1982 ed.), 220-228; *Duncan v. U.S.*, 667 F.2d 36, 42 (Ct. Cl. 1981).

30. F. Cohen, *Handbook of Federal Indian Law* 127 (1971).

31. *Russ*, *supra* note 31, 123-124.

32. *See*, Part II, section C of this Report for this history of the Hawaiian Homes Commission Act.

33. Cited in Testimony of R. Albu in Hearings on H. R. 93, Native Hawaiian Education Act., Nov. 14, 1979, 122.

34. Admission Act of March 18, 1959, 73 Stat. 4, § 4.

35. *Id*.

36. 588 F.2d 1216 (9th Cir. 1976).

37. Joint Resolution of Annexation of July 7, 1898, 30 Stat. 750; Act of April 30, 1900, Ch. 339, 31 Stat. 41, § 73(4)(c).

38. Admission Act, § 5(f).

39. *Johnson v. McIntosh*, 21 U. S. (8 Wheat.) 543, 574 (1823).

40. *Hynes v. Grimes Packing Co*., 337 U. S. 86 (1949); *Tee-Hit-Ton Indians v. United States*, 348 U. S. 272 (1955).

41. *Id*.

42. Eg. Northern Paiute Nation v. U.S., 7 Ind. Cl. Commission 322, 412 (1959), aff'd, 183 Ct. Cl. 321 (1968); Quapaw Tribe v. U.S., 128 Ct. Cl. 45, 49-50 (1954); U.S. v. Seminole Indians, 180 Ct. Cl. 375, 383 (1967). These tests were developed in case law interpreting the Indian Claims Commission Act.

43. See, eg. Confederated Tribes of the Warm Springs Reservation v. United States, 177 Ct.Cl. 184, 206-207 (1966); Nooksack Tribe v. United States, 3 Ind.Cl.Comm. 479, 494-495 (1955), aff'd, 162 Ct.Cl. 712 (1963), cert. denied 375 U.S. 993 (1964); Muckleshoot Tribe v. United States, 3 Ind.Cl.Comm.

44. Id.

45. See, discussion of ancient land tenure system in Part I, section A of this report.

46. Constitution of 1840, in L. Thurston, The Fundamental Laws of Hawaii, at 3 (1904).

47. Morris, The Land System of Hawaii, 21 ABA Journal 649, 650 (1935).

48. Revised Laws of Hawaii, 1925, at 2152-2176.

49. See, Estate of His Majesty Kamehameha IV, supra note 59.

50. Id., at 725.

51. Revised Laws of Hawaii 1925, at 2177.

52. Liliuokalani v. United States, 45 Ct. Cls. 418, 428 (1910).

53. Revised Laws of Hawaii 1925, at 2141-2142.

54. Revised Laws of Hawaii 1925, at 2233.

55. Williams v. City of Chicago, 242 U.S. 434 (1917); Mashpee Tribe v. New Seabury Corp., 592 F.2d 525 (1st Cir.), cert, denied, 444 U.S. 866 (1979); United States ex rel. Hualapai Indians v. Santa Fe Pac. R.R., 314 U.S. 339 (1941).

56. *See*, *U.S. v.Northern Paiute Nation*, 490 F.2d 954 (Ct. Cl. 1974); *U.S. v. Fort Sill Apache Tribe*, 533 F.2d 531 (Ct. Cl. 1976); *Temoak Bank of Western Shoshone Indians v. U.S.*, 593 F.2d 994 (Ct. Cl. 1979).

57. *Sac and Fox Tribe of Indians of Oklahoma v. United States*, 161 Ct. Cl. 189, 197 (1963), *cert*. *den*., 375 U.S. 921 (1963).

58. U.S. Government Printing Office, *Treaties and Conventions Concluded Between the United States of America and Other Powers Since July 4, 1776*, 274 (1886).

59. 9 Stat. 977.

60. 19 Stat. 625

61. 25 Stat. 1399

62. This policy is based upon international law considerations, *see*, eg. *Barker v. Harvey*, 181 U.S. 481 (1901).

63. Pueblo Lands Act of 1924, ch. 331, 43 stat. 636; California Private Land Claims Act of 1851, ch. 41, 9 Stat. 621; Alaska Native Claims Settlement Act, Pub. Law 92-203, § 4, 85 Stat. 688, 689.

FOOTNOTES

Chapter 5

1. T. Osborne, *Empire Can Wait* 29 (1981).

2. Webster to T. Halilo and William Richards, December 18, 1842, *Senate Executive Documents*, 52 Cong., 2 sess. No. 77, at 40-41; see also President John Tyler's statement of December 20, 1842, *id*, at 35-37.

3. *Id*.

4. G. Curtis, *Is It Constitutional?* 156 North American Review 282 (March 1893).

5. T. M. Cooley, *Grave Obstacles to Hawaiian Annexation*, 15 The Forum 392 (June 1893).

6. *See*, *e.g.*, *New York Herald*, April 24, 1893, at 6 and 33 *San Francisco Argonaut* 1 (November 20, 1893).

7. *Osborne*, *supra* note 1, at 34.

8. D. Turpie of Indiana, *Congressional Record*, 53 Cong., 2 sess., at 703-4 (January 11, 1894).

9. W. A. Russ, *The Hawaiian Republic (1894-1898)*, 198 (1961). *See also*, *id*., at 209, in which another petition against annexation by native Hawaiians is described.

10. See *Osborne*, *supra* note 1, at 85-95, for a discussion of the arguments against annexation propounded by sugar and labor interests.

11. *Id*., at 95.

12. *Id*., at 100.

13. *Id*., at 107.

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14. *See*, *e.g.*, *Congressional Record*, 55 Cong., 2 sess., at 5982 (June 15, 1898); Appendix at 669-70 (June 13, 1898).

15. *Id.*, at 6149 (June 20, 1898); *id.*, at 6310 (June 30, 1898).

16. A.O. Bacon, *id.*, at 6709-10 (July 6, 1898). The amendment was defeated by a vote of 20 yeas to 42 nays, with 27 abstentions.

17. *Id.*, at 6018 (June 15, 1898).

18. *Id.*, at 6712. Although a two-thirds majority was obtained in the Senate, a treaty may not have passed since the relative ease of obtaining a simple majority probably discouraged anti-annexationists from voting at all.

19. Joint Resolution of Annexation of July 7, 1898, 30 Stat. 750 [hereinafter cited as *Joint Resolution*].

20. J. Hobbs, *Hawaii: A Pageant of the Soil* 118 (1935). *But see*, L. Thurston, *A Handbook of the Annexation of Hawaii* 24 (no date), in which the amount of land involved is set at 1,740,000 acres valued at $4,389,550 in 1894.

21. *Joint Resolution*, *supra* note 19.

22. *Id.*

23. *Id.*

24. Act of April 30, 1900, ch. 339, 31 Stat. 41 [hereinafter cited as *Organic Act*].

25. *Id.* at §91.

26. *Id.* at §73(4)(c)

27. *Hawaii's Ceded Lands*, 3 U.H.L.R. 101, 121 (1981) [hereinafter cited as *Ceded Lands*]. *See also* , S. Rep. No. 675, 88th Cong., 1st sess. in which this special status is implicitly recognized.

28. *Organic Act*, *supra* note 24, at §§66, 68.

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29. *Id.*, at §80.

30. *Id.*, at §80.

31. *Id.*, at §§55. *See*, *Inter-Island Steam Nav., Co. v. Terr. of Hawaii*, 305 U. S. 306 (1938), in which it is noted that Congress may abrogate territorial laws or legislate directly for territories.

32. *Id.*, at §85.

33. *Historical Analysis*, *supra* note 33, at 16-17.

34. *Id.*, at 17-18.

35. *Id.*

36. 22 Ops. Atty. Gen. 574-577 (1899).

37. *Historical Analysis*, *supra* note 33, at 19.

38. President McKinley's executive order consisted simply of his signature of endorsement on the back of a war department letter requesting the lands be set aside. *See*, *id.*, at 20.

39. For a list of executive orders setting aside public lands between annexation and 1955, *see* Chronological Notes of Federal Acts Affecting Hawaii, *Rev. Laws Hawaii 1955*, 9-12.

40. *Osborne*, *supra* note 1, at 107.

41. *Historical Analysis*, *supra* note 33, at 68.

42. *Id.*, at 74.

43. *Id.*, at 68.

44. *Id.*

45. *Admission Act*, *supra* note 51.

46. *Ceded Lands*, *supra* note 27, at 102.

47. *Admission Act*, *supra* note 51, at §5(a).

48. *Id.*, at §5(b).

49. *Id*., at §5(g).

50. *Id*., at §5(c).

51. *Id*., at §5(d).

52. *Id*., at §5(e).

53. *Id*., at §5(f).

54. *Historical Analysis*, *supra* note 33, at 70-71.

55. *Id*., at 75.

56. *Id*.

57. *See* discussion in *id*., at 72-72.

58. Pub. Law. No. 88-233, 77 Stat. 242 (Dec. 23, 1963).

59. Interview with Jack Kaguni, formerly of the Land Management Division of the Hawaii Dept. of Land and Natural Resources.

60. *Admission Act*, *supra* note 51, at §5(f).

61. The DLNR is charged with managing all of Hawaii's public lands. *See* generally, HRS Chap. 171, and HRS §26-15 and note 86, *infra*.

62. A Report to the Governor and the Legislature of the State of Hawaii, submitted by the Legislative Auditor of the State of Hawaii, Audit Report No. 79-1 (January 1979) [hereinafter cited as *Audit*].

63. HRS §171-18 provides: *Public land trust*. All funds derived from the sale or lease or other disposition of public lands shall be appropriated by the laws of the State; provided, that all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and returned to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 6), and all proceeds and income from the

sale, lease or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act and later conveyed to the State under section 5(e) shall be held as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible, for the making of public improvements, and for the provision of lands for public use. (L 1962, c 32, pt of §2; Supp, §103A-181).

64. HRS [illegible]71-19 authorizes the land board to use the special land and development fund for the following purposes:

(1) To reimburse the general fund of the State for advancements heretofore or hereafter made therefrom, which are required to be reimbursed from the proceeds of sales, leases, licences, or permits derived from public lands;
(2) For the incidental maintenance of all lands under the control and management of the board, including the repair of the improvements thereon, not to exceed $100,000 in any fiscal year;
(3) To repurchase any land, including improvements thereon, in the exercise by the board of any right of repurchase specifically reserved in any patent, deed, lease, or other documents or as provided by law;
(4) For the payment of all appraisal fees; provided, that all such reimbursable fees collected by the board shall be deposited in the fund;
(5) For the payment of publication notices as required under this chapter, provided that all or a portion of the expenditures may be charged to the purchases or lessee of public lands or any interest therein under rules and regulations adopted by the board;
(6) For the planning and construction of roads and trails along state rights-of-way not to exceed $5,000 in any fiscal year;

> (7) For the payment to private land developer or developers who have contracted with the board for development of public lands under the provisions of section 171-60.

65. *Audit*, *supra* note 85, at 32-33.

66. *Id*., at 35.

67. *Ceded Lands*, *supra* note 27, at 142-143.

68. *Id*.

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(Chapters 6 and 7 relied heavily on an extensive paper submitted by Mrs. Billie Beamer, former Director of the State Department of Hawaiian Home Lands. Mrs. Beamer did not include footnotes)

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The Admission Act, An Act to Provide for the Admissions of the State of Hawaii into the Union (Act of March 18, 1959, Pub. L, 86-3, 73 Stat 4); S 4, 5(a) (b) (c) (d), S15

The Constitution of the State of Hawaii, Article XI, Sec. 1, 2, 3, Oct. 73, Stat 4, June 27, 1959

Hawaiian Homes Commission Act, 1926 (Act of July 9, 1921, c 42, 42 Stat 108), Part of the State Constitution

APPENDIX

A. THE PROBLEM OF LAND VALUATIONS

Real Property Tax Categories

The total valuation of ALL Hawaiian home lands is $968,764,679 near one billion in land and improvement valuations.

The Tax Office maintains three tax categories for 177,083 acres of Hawaiian Home Lands (another discrepant total).

Category I

Hawaiian Home Lands used by Hawaiian Homes Commission

These lands are not leased for revenue purposes or for homestead award. They may be lands used by the Department and other governmental agencies, or idle, unused lands. No taxes are collected from this category.

Category II

Hawaiian Home Lands Seven-Year Homestead Exemption

These lands comprise 1.5% of the total acreage (2,711.794 acres) and are valued at $60,074.485 or 6% of the total valuation.

These lands are under a seven-year exemption from real property taxes as stipulated in the Hawaiian Homes Commission Act.

194.51 acres or 7% of the land in this category are designed as residential. These residential valuations account for 95% of the total valuation of the category. No taxes are collected from this category.

Categories I and II

This accounts for 35.5% of all the lands; they are not taxable, and their value comprises 42% of the total valuation.

Category III

Hawaiian Homes All Other Taxable Lands :

These lands are taxable; they account for 65% of the lands (114,225.94 acres) and are valued at $559,989,952 or 58% of the total valuation of $968,764.679. 709.28 acres in this category are designated residential (homestead use); the total valuation for these lands is $526,367,799.

The remaining valuation is $33,622,153 divided by the remaining acreage of 113,516.3 results in a valuation per acre of 296.1. It is from these lands that the Department must generate its own operating income.

The average valuation per homestead taxable acreage is $742,115 -- hardly conceivable when one considers the unmarketability of these lands.

One wonders on what is the appraisal based.

B. TAXABLE LAND CATEGORY

Of the $968,764,679 tax valuation, 'only $559,989,95 is taxable land category. This valuation comprises 58% of the total valuation which is capable of generating revenue for the State and base revenues for the Department. Using the tax office total acreage of 177,093, and analysis of the taxable category follows:

There are 11,225,953 acres in this catgegory comprising 65% of all H.H.L.'s	709.28 acres are designated Residential or .6% of the land in this category	113,516.66 acres remain for agriculture, leasing and licensing - compromising 99.3% of the land in this category

559,989,952 is the total valuation for all lands in this category	526,367,799 is the valuation for the residential lands it comprises 93% of the total valuation	33,622,153 is the valuation for the remaining lands 6% of the valuation in this category for 99.3% of the land
484,492,355 is the land valuation which is 87% of the total valuation either the land is very valuable or there are minimal improvements on these lands	469,325,210 is the valuation for the residential lots the value per acre 662,115, 4955 times greater than the per-acre value for the remaining taxable lands-average parcel valuation of (val - 1788) = 262,486,135	15,167,145 is the land valuation for the remaining lands the value per acre 133.61, average parcel valuation of (val - 659) = 23,015.39
75,497,597 is the value of the improvements of 13% of the total valuation	57,042,589, 89% of the improvement valuation is for homestead residential lots or 80,423 per acre..or average parcel valuation of 31,903.01	18,455,008 or 11% of the improvements are for the remaining lands or 162.42 per acre or an average parcel valuation of 28,004.56
	Average size parcel = .39 acres	Average size of parcel = 172.25 acres
	Average land value of parcel = 262,486,135	Average land value of parcel = 23,015
	Aver. impr. val. per parcel = 31,903.01	Aver. impr. per parcel = 28,004.56

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Volume II of the Final Report of the Native Hawaiians Study was prepared in Honolulu, Hawai'i by the Hawai'i Office staff, Linda L. Delaney and Leonie Randall. Extensive use of work by Melody MacKenzie, Mililani Trask and Mrs. Billie Beamer was incorporated into the body of this dissenting study.

The Government Documents section of Hamilton Library, the graduate library of the University of Hawai'i at Manoa, collections at the Archives of the State of Hawai'i and the Bishop Museum have been heavily relied on for primary source materials. All photographs included in this volume are from the Archives.

Materials available only in the Library of Congress, the National Archives, departmental records, and private collections housed in various state archives and university libraries were not available to this effort.

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